



# Health Care Reform LEGISLATIVE BRIEF

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## Small Employer Health Care Tax Credit: Questions & Answers (Q&A)

The Patient Protection and Affordable Care Act (ACA) provides a tax credit to certain small employers that provide health care coverage to their employees, effective with tax years beginning in 2010. The following questions and answers from the Internal Revenue Service (IRS) provide information on the credit as it applies for 2010 through 2013 tax years. An enhanced version of the credit will be effective beginning in 2014.

Additional guidance on the credit is available in [Notices 2010-44](#) and [2010-82](#). The IRS's website at [www.irs.gov/newsroom/article/0,,id=223666,00.html](http://www.irs.gov/newsroom/article/0,,id=223666,00.html) also provides more information on the small business health care tax credit.

In addition, on Aug. 25, 2013, the IRS issued a [proposed rule](#) to provide guidance on the availability of the health care tax credit for 2014 and later taxable years. Employers may rely on the proposed rule for taxable years beginning after Dec. 31, 2013 and before Dec. 31, 2014.

### WHO GETS THE TAX CREDIT

#### Q. Who is eligible?

A. A qualified employer must have fewer than 25 full-time employees or a combination of full-time and part-time (for example, two half-time employees equal one employee for purposes of the credit), the average annual wages of employees must be less than \$50,000 and the employer must pay at least half of the insurance premiums. The employer must also pay premiums under a "qualifying arrangement." See the "What expenses count" question under the Calculating the Credit section.

#### Q. Can a tax-exempt organization be eligible?

A. Yes. A tax-exempt organization described in Code section 501(c) and exempt from tax under Code section 501(a) that otherwise meets the definition of a qualified employer may be eligible. See the "What is the maximum credit for a tax-exempt qualified employer?" question under the Calculating the Credit section.

#### Q. Can a household employer qualify, even if he or she is not directly engaged in a trade or business?

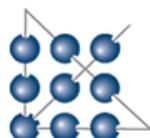
A. Yes. For tax years 2010 through 2013, a household employer can qualify.

#### Q. How about a small employer outside the U.S.?

A. A qualified employer outside the United States (including a U.S. territory) with income connected with a trade or business in the United States may claim the credit for tax years 2010 through 2013 if it pays for coverage issued in and regulated by one of the 50 states or the District of Columbia.

#### Q. How are employer contributions to a multi-employer plan treated for purposes of the credit?

A. Contributions are treated as payment of premiums for purposes of the credit, but 100 percent of the cost of coverage must be paid from employer contributions, not by employees. See Notice 2010-82 for more guidance.



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## Q. Can a section 521 farmers cooperative be eligible?

A. Yes. A section 521 farmers cooperative subject to tax under section 1381 is eligible as a taxable employer if it otherwise meets the definition of a qualified employer. See the “Who is eligible” question under this section.

## CALCULATING THE CREDIT

### Q. What expenses count?

A. Only premiums paid by the employer under a qualified arrangement count. The employer must pay at least 50 percent of coverage. If the employer provides more than one type of coverage or if the employer’s health insurance provider does not charge the same premium for all enrolled employees, the employer may qualify even if he or she paid less than 50 percent of the premium cost for some employees.

See section III.G of Notice 2010-82 for more guidance.

For tax years 2010 through 2013, only premiums paid to a health insurance issuer, such as an insurance company or HMO, count for purposes of the credit. Premiums for insurance that covers a wide variety of conditions, such as a major medical plan, and premiums for coverage that is more limited in scope, such as dental or vision, also count. But if an employer offers more than one type of coverage, the employer must satisfy the requirements separately for a qualifying arrangement (the employer cannot aggregate these different plans to meet the qualifying arrangement requirement). Also, 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 credit.

For a detailed description of the types of coverage that are counted for the credit, see section II.G of Notice 2010-44.

If an employer pays only a portion of the premiums and employees pay the rest, the amount counted to calculate the credit is only the portion paid by the employer. For example, if an employer pays 80 percent of the premiums, and employees have the other 20 percent taken out of their pay, only the 80 percent paid by the employer counts.

In addition, the amount of an employer’s premium payments that counts is capped. The employer’s premium payment may not be more than the average premium for the small group market in the state where the employer offers coverage. If an employer pays 80 percent of the premiums, what counts is the 80 percent paid by the employer or 80 percent of the small group market average — whichever is less. The average premium for the small group market does not apply separately to each type of coverage the employer offers; it provides an overall cap for all coverage provided by the employer. See the “What is the average premium for the small group market in a state?” question under this section for information on the average premium for the small group market in a state.

To help explain, here are six examples. Remember, the tax is based on “full-time equivalents” (FTEs) — that is, two half-time employees would equal one full-time employee.

**Example 1:** For the 2010 tax year, a qualified employer has nine FTEs with average annual wages of \$23,000. Six employees are enrolled in single coverage and three employees are enrolled in family coverage. The premiums are \$8,000 for single coverage for the year and \$14,000 for family coverage. The employer pays 50 percent of the premium for single coverage for each employee enrolled in single or family coverage (50 percent x \$8,000 = \$4,000 for each employee).

Number of Employees	Type of Coverage	Total Premiums	Employer Pays
6	Single	8,000	4,000
3	Family	14,000	4,000

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Thus, the employer pays \$4,000 of the premium for each of the six employees enrolled in single coverage and \$4,000 of the premium for each of the three employees enrolled in family coverage. The employer satisfies the uniformity requirement.

**Example 2:** We use the same facts as in Example 1, except that the employer pays 50 percent of the premium for employees enrolled in single coverage (\$4,000 for each of those six employees) but pays none of the premium for employees enrolled in family coverage.

Number of Employees	Type of Coverage	Total Premiums	Employer Pays
6	Single	8,000	4,000
3	Family	14,000	0

The employer does not satisfy the uniformity requirement.

**Example 3:** For the 2010 tax year, a qualified employer offers a health insurance plan with single and family coverage. The employer has nine FTEs with average annual wages of \$23,000. Four employees are enrolled in single coverage and five are enrolled in family coverage.

The employer pays 50 percent of the premiums for all employees enrolled in single coverage and 50 percent of the premiums for all employees enrolled in family coverage. The employee is responsible for the remainder in each case. The premiums are \$4,000 a year for single coverage and \$10,000 a year for family coverage. The average premium for the small group market in the employer's state is \$5,000 for single coverage and \$12,000 for family coverage.

The employer's premium payments for each FTE (\$2,000 for single coverage and \$5,000 for family coverage) do not exceed 50 percent of the average premium for the small group market in the employer's state (\$2,500 for single coverage and \$6,000 for family coverage).

Number of Employees	Type of Coverage	Total Premiums	State Avg. Premium	Employer Pays 50%
4	Single	4,000	5,000	2,000
5	Family	10,000	12,000	5,000

Thus, the amount of premiums paid by the employer for purposes of computing the credit equals \$33,000 [(4 x \$2,000) plus (5 x \$5,000)].

**Example 4:** Assume the same facts as in Example 3, except that the premiums are \$6,000 for single coverage and \$14,000 for family coverage and the employer pays 50 percent of these amounts.

The employer's premium payments for each employee (\$3,000 for single coverage and \$7,000 for family coverage) exceed 50 percent of the average premium for the small group market in the employer's state (\$2,500 for single coverage and \$6,000 for family coverage).

Number of Employees	Type of Coverage	Total Premiums	State Avg. Premium	Employer Pays 50%	50% of State Avg. Premium
4	Single	6,000	5,000	3,000	2,500
5	Family	14,000	12,000	7,000	6,000

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

**Example 5:** For the 2010 tax year, a qualified employer offers a major medical plan and a dental plan. The employer pays 50 percent of the premium cost for single coverage for all employees enrolled in the major medical plan and 50 percent of the premium cost for single coverage for all employees enrolled in the dental plan.

For purposes of calculating the credit, the employer can count the premiums paid for both the major medical and the dental, but only up to the 50 percent cap — an amount equal to 50 percent of the small market average.

**Example 6:** The employer pays 40 percent of the premium cost for single coverage for all employees enrolled in the dental plan.

The employer cannot take into consideration premiums paid for the dental plan because he did not pay at least 50 percent of the premium.

## **Q. What is the average premium for the small group market in a state, and where can employers find the average premiums each year?**

A. The IRS publishes the information for calculating the credit in the [Instructions for Form 8941](#), Credit for Small Employer Health Insurance Premiums, each year. The IRS works with the Department of Health and Human Services to obtain the average premium figures for the Small Employer Health Care Tax Credit each year.

## **Q. Will the IRS issue another Revenue Ruling, like Rev. Rul. 2010-13 which provided the 2010 average premium for the small group market in each state, to provide the figures to use for 2011? If not the IRS, where can an employer find the information for 2011?**

A. The IRS is working with the Department of Health and Human Services to obtain the average premium figures for the Small Employer Health Care Tax Credit for the 2011 tax year.

We plan to publish the 2011 information for calculating the credit in the instructions for Form 8941, Credit for Small Employer Health Insurance Premiums. The draft revision to the 2011 instructions should be available to the public later in Fall 2011. As soon as the updated forms are available, they will be published on IRS.gov under the Forms and Publications page and linked to the Small Business Health Care Tax Credit for Small Employers page.

*Update: The [2012 Instructions for Form 8941](#) contain the average premium figures for the small business health care tax credit for the 2012 tax year.*

## **Q. What if an employer has employees in multiple states?**

A. The employer applies the average state premium for each employee based on the state where the employee works.

## **Q. What is the maximum credit for a qualified employer who is not tax-exempt?**

A. For tax years 2010 through 2013, the maximum credit is 35 percent of the employer's eligible premium expenses. See the "What expenses count?" question under this section.

## **Q. What is the maximum credit for a tax-exempt qualified employer?**

A. For tax years 2010 through 2013, the maximum credit is 25 percent of the employer's qualified premium expenses. However, the amount of the credit cannot be more than the total amount of income and Medicare tax (i.e., hospital insurance) the employer is required to withhold from employees' wages for the year and the employer share of Medicare tax on employees' wages for the year.

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## **Q. How is the credit reduced if the number of FTEs exceeds 10 or average annual wages exceed \$25,000?**

A. Formulas help determine the effect of having more than 10 FTEs or average annual wages that exceed \$25,000. For each FTE above 10 the credit is reduced by 1/15. For each \$1,000 above \$25,000 in average annual wages the credit is reduced by 1/25.

**Example 1 (for qualified employers that are NOT tax-exempt organizations):** For the 2010 tax year, the employer has 12 FTEs and average annual wages of \$30,000. The employer pays \$96,000 in health care premiums for those employees, which does not exceed the average premium for the small group market in the employer's state.

For eligible employers that are NOT tax-exempt organizations, the credit is calculated as follows:

1. Initial amount of credit determined before any reduction:  $(35 \text{ percent} \times \$96,000) = \$33,600$
2. Credit reduction for FTEs in excess of 10:  $(\$33,600 \times 2/15) = \$4,480$
3. Credit reduction for average annual wages in excess of \$25,000:  $(\$33,600 \times \$5,000/\$25,000) = \$6,720$
4. Total credit reduction:  $(\$4,480 + \$6,720) = \$11,200$
5. Total 2010 tax credit:  $(\$33,600 - \$11,200) = \$22,400$

**Example 2 (For qualified employers that ARE tax-exempt organizations):** For the 2010 tax year, the employer has 12 FTEs and average annual wages of \$30,000. The employer pays \$96,000 in health care premiums for those employees, which does not exceed the average premium for the small group market in the employer's state. The total amount of the employer's income tax and Medicare tax withholding plus the employer's share of the Medicare tax equals \$30,000 in 2010.

For eligible employers that ARE tax-exempt organizations the credit is calculated as follows:

1. Initial amount of credit determined before any reduction:  $(25 \text{ percent} \times \$96,000) = \$24,000$
2. Credit reduction for FTEs in excess of 10:  $(\$24,000 \times 2/15) = \$3,200$
3. Credit reduction for average annual wages in excess of \$25,000:  $(\$24,000 \times \$5,000/\$25,000) = \$4,800$
4. Total credit reduction:  $(\$3,200 + \$4,800) = \$8,000$
5. Employer's withholding and Medicare taxes: \$30,000
6. Total 2010 tax credit:  $(\$24,000 - \$8,000) = \$16,000$  (the lesser of \$16,000 and \$30,000).

## **Q. Do premiums count if they were paid by the employer in 2010 before the new health reform legislation was enacted?**

A. Yes. In computing the credit for a tax year beginning in 2010, employers may count all qualified premiums for that tax year.

## **Q. What effect do state credits and state subsidies for health insurance have on the amount of the federal health care tax credit?**

A. Some states offer tax credits or a premium subsidy to certain small employers who provide health insurance to their employees. Generally, the premium subsidy is in the form of direct payments to the employer or to the employer's insurance company. The effect these credits and subsidies on an employer's federal health care tax credit depends on whether the direct payment goes to the employer or the insurance company.

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If a state tax credit or a premium subsidy is paid directly to the employer, the effect on calculation of the federal health care tax credit in general is zero.

If a state makes payments directly to an insurance company, the state is treated as making these payments on behalf of the employer. That may affect whether the employer is still paying 50 percent of workers' health insurance costs.

State payments aside, the federal health care tax credit cannot exceed the amount of the employer's net premium payments. In the case of a state tax credit for an employer or a state subsidy paid directly to an employer, the employer's net premium payments are calculated by subtracting the state tax credit or subsidy from the employer's actual premium payments. In the case of a state direct payment to an insurance carrier, the employer's net premium payments are the employer's actual premium payments.

A state-administered program (such as Medicaid) may make payments directly to a health care provider or insurance company on behalf of eligible individuals and their families. Those payments are not taken into account in determining the employer's federal health care tax credit.

**Example 1:** The employer's state provides a health insurance premium subsidy of up to 40 percent of the health insurance premiums for each eligible employee. The state pays the subsidy directly to the employer.

The employer has one employee, Employee D. Employee D's health insurance premiums are \$100 per month and are paid as follows: \$80 by the employer and \$20 by Employee D through salary reductions under a cafeteria plan. The state pays employer \$40 per month as a subsidy.

For purposes of calculating the amount of the federal health care tax credit, the amount of premiums paid by the employer is \$80 per month.

**Example 2:** The employer's state provides a health insurance premium subsidy of up to 50 percent for each eligible employee. The state pays the premium directly to the employer's health insurance provider.

The employer has one employee. The employee is enrolled in single coverage under the employer's health insurance plan.

The employee's health insurance premiums are \$100 per month and are paid as follows: \$30 by the employer; \$50 by the state and \$20 by the employee. The state pays the \$50 per month directly to the insurance company and the insurance company bills the employer for \$50 per month (the sum of the employer and employee's share).

For purposes of determining whether the employer meets the requirements for a qualifying arrangement, and for purposes of calculating the amount of the federal health care tax credit, the amount of premiums paid by the employer is \$80 per month (the sum of the employer's payment and the state's payment, which is treated as having been made on behalf of the employer).

**Example 3:** The employer's state provides a health insurance premium subsidy of up to 50 percent for each eligible employee. The state pays the premium directly to the employer's health insurance provider.

The employer has one employee. The employee is enrolled in single coverage under employer's health insurance plan.

The employee's health insurance premiums are \$100 per month and are paid as follows: \$20 by the employer; \$50 by the state and \$30 by the employee. The state pays the \$50 per month directly to the insurance company and the insurance company bills the employer for \$50 per month (the sum of the employer's and employee's shares).

The amount of premiums paid by the employer is \$70 per month (the sum of the employer's payment and the state's payment, which is treated as having been made on behalf of the employer), which is more than 50 percent of the \$100 monthly premium payment. The amount of the premium for calculating the maximum federal health care tax credit is also \$70 per month. The maximum credit is \$24.50 ( $\$70 \times 35\%$ ).

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The employer's net premium payment is \$20 (the amount actually paid by the employer excluding the state subsidy). After applying the limit for the employer's net premium payment, the federal health care tax credit is \$20 per month (the lesser of \$24.50 or \$20).

## **Q. Do church welfare benefit plans qualify?**

A. When a small church employer — that is qualified in other respects — pays premiums for employees under a church welfare benefit plan, that may be a qualifying arrangement for purposes of the credit.

## **DETERMINING FTEs AND AVERAGE ANNUAL WAGES**

### **Q. How is the number of FTEs determined?**

A. Add up the total hours of service for which the employer pays wages to employees during the year (but not more than 2,080 hours for any employee). Divide by 2,080. If the result is not a whole number, round to the next lowest whole number. (If the result is less than one, round up to one FTE). See questions below for information on which employees are counted.

An employee's hours of service include each hour for which he or she is paid, or entitled to payment, during the employer's tax year. Add each hour of paid leave (no more than 160 hours of service are required to be counted for an employee on account of any single continuous period of paid leave).

Three ways to calculate:

1. Determine actual hours of service from records of hours worked and hours for which payment is made or due, including hours for paid leave;
2. Use a days-worked equivalency whereby the employee is credited with 8 hours of service for each day for which payment is made or due including days of paid leave; or
3. Use a weeks-worked equivalency whereby the employee is credited with 40 hours of service for each week for which payment is made or due including weeks of paid leave.

Employers may apply different methods for different classifications of employees, if the classifications are reasonable and consistently applied. For example, it is permissible for an employer to use method 1 for all hourly employees and method 3 for all salaried employees. Employers may change the method for calculating employees' hours of service for each taxable year.

**Example 1:** For the 2010 tax year, an employer's payroll records indicate that an employee worked 2,000 hours and was paid for an additional 80 hours on account of vacation, holiday and illness. In calculating hours of service, the employer uses a method that counts hours actually worked.

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:** For the 2010 tax year, an employee worked 49 weeks, took two weeks of vacation with pay, and took one week of leave without pay. In calculating hours of service, the employer uses the weeks-worked equivalency method.

Employee B must be credited with 2,040 hours of service (51 weeks multiplied by 40 hours per week).

**Example 3:** For the 2010 tax year, an employer pays five employees wages for 2,080 hours each, three employees wages for 1,040 hours each, and one employee wages for 2,300 hours. The employer uses a method that counts hours actually worked.

The employer's FTEs would be calculated as follows:

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Total hours not exceeding 2,080 per employee is 15,600 hours:

- 10,400 hours for the five employees paid for 2,080 hours each (5 x 2,080)
- 3,120 hours for the three employees paid for 1,040 hours each (3 x 1,040)
- 2,080 hours for the one employee paid for 2,300 hours (lesser of 2,300 and 2,080)

Based on 15,600 hours of service, the employer has seven FTEs (15,600 divided by 2,080 = 7.5, rounded to the next lowest whole number).

**Example 4:** For the 2010 tax year, an employer has 26 FTEs with average annual wages of \$23,000 each. Only 20 of the employees are enrolled in the employer's health insurance plan.

The hours of service and wages of all employees are taken into consideration to determine whether the employer is qualified for the credit. Because the employer does not have fewer than 25 FTEs for the tax year, the employer is not qualified.

## **Q. How is the amount of average annual wages determined?**

A. Add up the total wages paid by the employer during the tax year. Divide by the number of FTEs for the year. Round down the result to the nearest \$1,000 (if not a multiple of \$1,000). Include only wages paid for hours of service (see the question, "How is the number of FTEs determined?" under this section). Use wages as defined for purposes of the Federal Insurance Contributions Act (FICA) (without regard to the wage base limitation). See questions below for information on which employees are counted.

**Example 1:** For the 2010 tax year, an employer pays a total of \$224,000 in wages to employees and has 10 FTEs.

The employer's average annual wages are \$22,000 (\$224,000 divided by 10 = \$22,400, rounded down to the nearest \$1,000).

## **Q. How are average annual wages and FTEs calculated when the employer has a short taxable year?**

A. In accordance with general accounting principles, average annual wages and FTEs may be pro-rated (or annualized) in calculating the section 45R credit. For example, if a small employer has been in business (and paying premiums) for 6 months during its first taxable year, it may pro-rate the employee hours worked and wages earned to reflect the 6 months the employer has been in operation.

## **Q. Can an employer with 25 or more employees qualify for the credit if some of its employees are part-time?**

A. Yes. Because the limitation on the number of employees is based on FTEs, an employer with 25 or more employees could qualify for the credit if some of its employees work part-time. For example, an employer with 46 half-time employees (meaning each employee is paid wages for 1,040 hours) has 23 FTEs and therefore may qualify for the credit.

## **Q. Do seasonal workers count?**

A. Generally, no. Seasonal workers are not included in the FTE and wage calculation unless they work for the employer more than 120 days during the tax year. However, premiums paid by the employer on behalf of seasonal employees may be counted in determining the amount of the employer's credit.

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## **Q. Are leased employees counted?**

A. Yes, leased employees (as defined in section 414(n)) are counted in the FTE and wage calculation. However, premiums for health insurance coverage paid by a leasing organization are not taken into account in computing the service-recipient's credit.

## **Q. If an owner of a business also provides services to the business, does the owner count as an employee for purposes of the credit?**

A. Generally, no. A sole proprietor, a partner in a partnership, a shareholder owning more than 2 percent of an S corporation, and any owner of more than 5 percent of other businesses is not considered an employee for purposes of the credit.

## **Q. Do family members of a business owner who work for the business count as employees for purposes of the credit?**

A. Generally, no. A family member of any of the business owners or partners listed in the question, "If an owner of a business also provides services to the business, does the owner count as an employee for purposes of the credit?" under this section, or a member of such a business owner's or partner's household, is not considered an employee for purposes of the credit. Neither their wages nor their hours are counted in determining the number of FTEs or the amount of average annual wages, and premiums paid on their behalf are not counted in determining the amount of the credit.

For this purpose, a family member is defined 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. In addition, spouses of certain business owners are not considered employees for purposes of the credit. Specifically: the employee-spouse of a shareholder who owns more than 2 percent of the stock of an S corporation; the employee-spouse of an owner of more than 5 percent of a business; the employee-spouse of a partner owning more than a 5 percent interest in a partnership; and the employee-spouse of a sole proprietor.

## **Q. How is eligibility for the credit determined if the employer is a member of a controlled group or an affiliated service group?**

A. Members of a controlled group (e.g., businesses with the same owners) or an affiliated service group (e.g., related businesses where one performs services for the other) are treated as a single employer for purposes of the credit. For example, all employees of the controlled group or affiliated service group, and all wages paid to employees by the controlled group or affiliated service group, are counted in determining whether any member of the controlled group or affiliated service group is a qualified employer. Rules for determining whether an employer is a member of a controlled group or an affiliated service group are provided under Internal Revenue Code (IRC) sections 414(b), (c), (m), and (o).

**Example:** A taxpayer owns 100 percent of a sole proprietorship and files a Schedule C. The taxpayer also owns at least 80 percent of the voting power or value of the shares of an S Corporation. Even if the sole proprietorship and the S Corporation individually meet the requirements of IRC 45R, IRC 414 and related regulations provide that there is common control under IRC 1563(a) and when there is common control, the taxpayer must calculate their credit including the employees, their wages and premiums paid for all entities as one entity.

## **Q. Can a tax-exempt organization described in section 501(c) include a minister in its calculation when determining eligibility for the small business health care tax credit?**

A. The answer depends on whether, under the common law test for determining worker status, the minister is considered an employee of the tax-exempt organization or self-employed. If the minister is an employee, he or she is taken into account in determining an employer's FTEs for purposes of the health care tax credit. Also, premiums paid

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by the employer for the health insurance coverage of a minister who is an employee can be taken into account in computing the credit, subject to limitations on the credit. If the minister is self-employed, he or she is not taken into account in determining an employer's FTEs or premiums paid.

**Q. Are the wages of a minister taken into account when computing average annual wages for purposes of determining eligibility for the credit?**

A. No. Compensation paid to ministers who are common law employees for duties performed in the exercise of their ministry is not subject to FICA taxes and is not a wage as defined in section 3121(a). Thus, the wages of a minister who is a common law employee are not taken into account.

## HOW TO CLAIM THE CREDIT

**Q. How does an employer (other than a tax-exempt employer) claim the credit?**

A. An employer (other than a tax-exempt employer) claims the credit on the employer's annual income tax return, with an attached Form 8941 showing the calculation of the credit.

**Q. How does a tax-exempt employer claim the small business health care tax credit?**

A. An employer that is described in section 501(c) and exempt from tax under section 501(a) claims the refundable credit by filing Form 990-T with an attached Form 8941 showing the calculation of the claimed credit. See the question, "Can a tax-exempt organization be eligible?" under the Who Gets the Tax Credit section.

**Q. May an employer use the credit to offset its alternative minimum tax (AMT) liability?**

A. Yes. The credit can be used, subject to certain limitations based on the amount of an employer's regular tax liability, AMT liability and other allowable credits. See IRC section 38(c)(1), as modified by section 38(c)(4)(B)(vi).

**Q. Can an employer (other than a tax-exempt employer) claim the credit if it has no taxable income and no AMT liability for the year?**

A. Generally, no. The credit offsets only an employer's actual income tax liability or AMT liability for the year, subject to certain limitations. However, under the general business credit rules, as amended by section 2012 of the Small Business Jobs Act of 2010, the tax year 2010 unused credit may be carried back five years or forward up to 20 years. For other years, normal carryback and carry forward rules apply.

**Q. Can a tax-exempt employer claim the credit if it has no taxable income for the year?**

A. Yes. For a tax-exempt employer, the credit is refundable, so even if the employer has no taxable income, the employer may receive a refund (so long as it does not exceed the employer's income tax withholding and Medicare tax liability, as discussed in the question, "What is the maximum credit for a tax-exempt qualified employer?," under the Calculating the Credit section.

**Q. Can the credit be reflected in determining estimated tax payments for a year?**

A. Yes.

**Q. Does taking the credit affect an employer's deduction for health insurance premiums?**

A. Yes. In determining the employer's allowable deduction for health insurance premiums, the amount of premiums that can be deducted is reduced by the amount of the credit.

**Q. May an employer reduce employment tax payments — withheld income tax, Social Security tax and Medicare tax — during the year in anticipation of the credit?**

A. No. The credit applies against income tax, not employment taxes.

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# Small Business Health Care Tax Credit: Questions & Answers (Q&A)

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## **Q. How is the credit applied for an employer with a fiscal tax year?**

A. If the employer has a tax year beginning, for example, on July 1, 2010, the credit first applies for the taxable year beginning on July 1, 2010, and ending on June 30, 2011.

## **TRANSITION RELIEF FOR TAX YEARS BEGINNING IN 2010**

### **Q. Is relief available to make it easier for small employers to meet the requirements for a qualifying arrangement?**

A. Yes. In Notice 2010-44, the IRS and Treasury issued guidance providing that, for tax years beginning in 2010, certain transition relief applies. Specifically, an employer will be deemed to satisfy the uniformity requirement if it pays at least 50 percent of the premium for single coverage for each enrolled employee, even if it does not pay the same percentage of the premium for each employee. For example, if the employer offers more expensive coverage (such as family), the employer will have satisfied the uniformity requirement if it pays at least 50 percent of the premium for single coverage for that employee (even if it is less than 50 percent of the family coverage).

Also, Notice 2010-82 further clarifies ways for a small employer to meet the requirements for a qualifying arrangement. For tax years beginning in 2010, an employer can use the transition rule above or the rules in Notice 2010-82.

### **Q. Can employers who do not satisfy the 2010 transition rule still meet the qualifying arrangement requirement for the tax year beginning in 2010?**

A. Yes. Certain employers who do not satisfy the 2010 transition rule (because they contribute less than 50 percent of the employee-only premium for some enrolled employees) may still qualify for the credit for the tax year beginning in 2010 under other rules for qualifying arrangements set forth in Notice 2010-82. Employers who may be able to take advantage of these rules include, for example, employers who offer more than one type of health insurance coverage or whose insurance provider does not charge the same premium for all employees enrolled in single (employee-only) coverage. For details on these additional rules, see Notice 2010-82.

*Source: Internal Revenue Service*

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