

## Section 45R – Transition Relief with Respect to the Tax Credit for Employee Health Insurance Expenses of Certain Small Employers

Notice 2014-6

### I. PURPOSE

This notice provides guidance on section 45R of the Internal Revenue Code (Code) for certain small employers that cannot offer a qualified health plan (QHP) through a Small Business Health Options Program (SHOP) Exchange because the employer's principal business address is in a county in which a QHP through a SHOP Exchange will not be available for the 2014 calendar year. (See section IV of this notice for a list of those counties.) With respect to those employers, this notice provides guidance on how to satisfy the requirements for the section 45R credit for the 2014 taxable year.

### II. BACKGROUND

Section 45R was added to the Code by section 1421 of the Patient Protection and Affordable Care Act, enacted March 23, 2010, Pub. L. No. 111-148. Section 45R offers a tax credit to certain small employers that provide health insurance coverage to their employees (eligible small employers). The credit generally is available for taxable years beginning after December 31, 2009. For taxable years beginning after December 31, 2013, the credit is available only with respect to premiums paid by a small employer for a QHP offered by the employer to its employees through a SHOP Exchange, and is available only for a two consecutive taxable year period. Additionally, for taxable years beginning after December 31, 2013, the maximum credit rate is increased to 50 percent

from 35 percent for eligible small employers (and to 35 percent from 25 percent for tax-exempt eligible small employers).

The Treasury Department and the IRS issued proposed regulations under section 45R on August 26, 2013 (78 FR 52719). The proposed regulations provide guidance on determining eligibility for the credit and calculating and claiming the credit. The proposed regulations also provide a transition rule for an eligible small employer with a group health plan year that begins on a date in 2014 other than the first day of the employer's taxable year. In particular, the proposed regulations provide that if (1) as of August 26, 2013, a small employer offers coverage for 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. For an employer that meets these requirements, the proposed regulations provide that 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. See Treas. Prop. Reg. § 1.45R-3(i). The proposed regulations provide that employers may rely on the proposed regulations for guidance for taxable years beginning after December 31, 2013, and before December 31, 2014.

The Treasury Department and the IRS have been advised by the Department of Health and Human Services (HHS) that for calendar year 2014 SHOP Exchanges in certain counties in Washington and Wisconsin will not have QHPs available for employers to offer to employees. Under HHS regulations governing eligibility for SHOP Exchanges, an employer may either (1) offer coverage to all of its eligible employees through the SHOP whose service area includes the employer's principal business address, or (2) offer coverage to each eligible employee through the SHOP whose service area includes that employee's primary worksite. 45 CFR 155.710(b)(3). Under either approach, an employer may offer SHOP coverage to employees whose primary worksite is at its principal business address only if that address is located within the service area of the SHOP. As a result, absent transition relief, an otherwise eligible small employer with its principal business address in a county without any QHPs available would be denied the opportunity to claim the section 45R credit for 2014. To provide these otherwise eligible small employers an opportunity to claim the section 45R credit for 2014, this notice provides transition relief for those employers for the plan year of the employer's group health plan beginning in 2014. In addition, this notice modifies the application of the transition rule in the proposed regulations for an eligible small employer with a principal business address in one of the counties listed in section IV below with a group health plan year that begins on a date in 2014 other than the first day of the employer's taxable year. Prop. Treas. Reg. § 1.45R-3(i).

### III. TRANSITION RELIEF

An eligible small employer with a principal business address in one of the counties listed in section IV below may calculate the credit under section 45R by

treating health insurance coverage provided for the 2014 health plan year as qualifying for the section 45R credit, provided that that the coverage would have qualified for a credit under section 45R under the rules applicable before January 1, 2014. This treatment applies with respect to the health plan year beginning in 2014, including any portion of that plan year that continues into 2015. If the eligible small employer claims the section 45R credit for the 2014 taxable year, 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 first year of the two consecutive taxable year credit period. In addition, if the eligible small employer claims the section 45R credit for the portion of the 2014 health plan year that continues into 2015, the tax credit will be calculated at the 50 percent rate (35 percent rate for tax-exempt eligible small employers) for the corresponding portion of the 2015 taxable year.

In addition, for purposes of the transition rule for an eligible small employer with a group health plan year that begins on a date in 2014 other than the first day of the employer's taxable year as provided in the proposed regulations (Prop. Treas. Reg. § 1.45R-3(i)), an employer with a principal business address in one of the counties listed in section IV of this notice is not required to begin offering coverage through a SHOP Exchange as of the first day of its plan year that begins in 2014 in order to be treated as offering coverage through a SHOP Exchange for its entire 2014 taxable year. Instead, such an employer is required to continue offering health insurance coverage for the plan year that begins in 2014 that would have qualified for a tax credit under section 45R under the rules applicable before January 1, 2014.

The relief in this notice is illustrated by the following examples:

Example 1. (i) Facts. An eligible small employer that is not a tax-exempt employer (Employer) has a 2014 health plan year and a 2014 taxable year that both begin January 1, 2014 and end December 31, 2014. Employer's principal business address is in a county listed in this notice. Employer provides health insurance coverage from January 1, 2014 through December 31, 2014 that would have qualified Employer for a credit under section 45R under the rules applicable to taxable years beginning before January 1, 2014.

(ii) Conclusion. Employer may claim the credit under section 45R at the 50 percent rate for the entire 2014 taxable year. If Employer claims the credit for the 2014 taxable year, the 2014 taxable year is the first year of the two consecutive taxable year credit period.

Example 2. (i) Facts. An eligible small employer that is not a tax-exempt 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 April 1, 2014 and ends March 31, 2015. Employer's principal business address is in a county listed in this notice. Employer provides health insurance coverage from January 1, 2014 through March 31, 2014 (the remaining months of its plan year that begins April 1, 2013) that would have qualified Employer for a credit under section 45R using the rules applicable to taxable years beginning before January 1, 2014. Employer provides coverage from April 1, 2014 through December 31, 2014 (the initial months of its plan year that begins April 1, 2014) and from January 1, 2015 through March 31, 2015 that would have qualified Employer for a credit under section 45R under the rules applicable to taxable years beginning before January 1, 2014.

(ii) Conclusion. Employer may claim the credit under section 45R at the 50 percent rate for the entire 2014 taxable year. If Employer claims the credit for the 2014 taxable year, the 2014 taxable year is the first year of the two consecutive taxable year credit period. Employer may also claim the credit under section 45R for its 2015 taxable year at the 50 percent rate for January through March of 2015 (in addition to any credit under section 45R for which Employer is eligible based on coverage provided for April through December of the 2015 taxable year).

#### IV. LIST OF COUNTIES

Washington: Adams, Asotin, Benton, Chelan, Clallam, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Grays Harbor, Island, Jefferson, King, Kitsap, Kittitas, Klickitat, Lewis, Lincoln, Mason, Okanogan, Pacific, Pend Oreille, Pierce, San Juan, Skagit, Skamania, Snohomish, Spokane, Stevens, Thurston, Wahkiakum, Walla Walla, Whatcom, Whitman, and Yakima counties.

Wisconsin: Green Lake, Lafayette, Marquette, Florence, and Menominee counties.

## V. EFFECTIVE DATE

This notice is effective as of [INSERT DATE OF RELEASE] and applies to periods after December 31, 2013.

## DRAFTING INFORMATION

The principal author of this notice is Stephanie Caden of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this notice contact Stephanie Caden at (202) 317-5500 (not a toll-free call).