

Section 45R – 2016 Guidance with Respect to the Tax Credit for Employee Health Insurance Expenses of Certain Small Employers

Notice 2016-75

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 the Small Business Health Options Program (SHOP) Exchange because the employer's principal business address is in a county in Wisconsin in which a QHP through a SHOP Exchange will not be available for all or part of 2016 calendar year. Section IV of this notice includes a list of those counties. With respect to those employers in Wisconsin, this notice provides guidance on how to satisfy the requirements for the section 45R credit for coverage provided during the 2016 calendar year and the portion of a health plan year beginning in 2016, if any, that continues into 2017. (See Notice 2014-6, 2014 I.R.B. 279 and Notice 2015-08, 2015 I.R.B. 589 for guidance on counties in other states in which a QHP through a SHOP Exchange might not be available during 2014 and 2015.)

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 period of two consecutive taxable years. 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). An eligible small employer may claim the credit by filing an income tax return and attaching Form 8941, "Credit for Small Employer Health Insurance Premiums" (or in the case of tax-exempt eligible small employers, filing Form 990-T, "Exempt Organization Business Income Tax Return," and attaching Form 8941).

The Treasury Department and the IRS issued final regulations under section 45R on June 30, 2014 (79 FR 36640). The regulations provide guidance on determining eligibility for the credit and calculating and claiming the credit.

The Treasury Department and the IRS have been advised by the Department of Health and Human Services (HHS) that for calendar year 2016 the SHOP Exchanges in Wisconsin will not have QHPs available in certain counties for employers to offer to their employees. Under HHS regulations governing employer eligibility for SHOP Exchanges, an employer may either (1) offer coverage to all of its eligible full-time employees through the SHOP whose service area includes the employer's principal business address, or (2) offer coverage to each eligible full-time 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 the relief provided in this notice, 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 2016. To provide these otherwise eligible small employers an opportunity to claim the section 45R credit for 2016, this notice provides relief for those employers for the plan year of the employer's group health plan beginning in 2016, including any portion of that plan year that continues into 2017, with respect to employees whose primary worksite is at the employer's principal business address.

On December 17, 2013, the Treasury Department and the IRS issued Notice 2014-6, 2014-2 I.R.B. 279, which provided transition relief for employers in certain counties in Washington and Wisconsin with no SHOP coverage available in 2014. On January 16, 2015, Notice 2015-08, 2015-6 I.R.B. 589, was issued which provided similar relief for employers in certain counties in Iowa with no SHOP coverage available in 2015. The Treasury Department and the IRS have determined that similar relief, described in section III of this notice, is appropriate for employers in certain counties in Wisconsin with no SHOP coverage available in 2016. Nothing in this notice is intended to modify or otherwise affect the relief provided in Notice 2014-6 or Notice 2015-08.

III. 2016 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 2016 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 coverage provided during the 2016 calendar year

and during any portion of a health plan year beginning in 2016 that continues into 2017. If the eligible small employer claims the section 45R credit for the 2016 taxable year, then the credit will be calculated at the 50 percent rate (35 percent for tax-exempt eligible small employers) for the entire 2016 taxable year. If the eligible small employer first claims the section 45R credit for the 2016 taxable year, the 2016 taxable year will be the first year of the two-consecutive-taxable year credit period. If the eligible small employer first claims the section 45R credit for the 2015 taxable year, then the 2016 taxable year will be the second year of the two-consecutive-taxable year credit period, regardless of whether the eligible small employer takes advantage of the relief in this notice regarding the credit for coverage provided under the rules applicable before January 1, 2014.

The relief in this notice is illustrated by the following examples. The examples assume that the employer is an eligible small employer that is not a tax-exempt employer, and that its principal business address is in a county listed in this notice.

Example 1. (i) Facts. Employer does not claim the credit for coverage provided for its 2015 taxable year. Employer has a 2016 health plan year and a 2016 taxable year that both begin January 1, 2016, and end December 31, 2016. Employer provides health insurance coverage from January 1, 2016, through December 31, 2016, 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 at the 50 percent rate under section 45R for coverage provided for the entire 2016 taxable year. If Employer claims the credit for coverage provided for the 2016 taxable year, the 2016 taxable year is the first year of its two-consecutive-taxable year credit period.

Example 2. (i) Facts. Employer does not claim the credit for coverage provided for its 2015 taxable year. Employer has a 2016 taxable year that begins January 1, 2016, and ends December 31, 2016, and a 2016 health plan year that begins April 1, 2016, and ends March 31, 2017. From April 1, 2016 through December 31, 2016 (the initial months of its plan year that begins April 1, 2016) and from January 1, 2017 through March 31, 2017, Employer provides coverage 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 at the 50 percent rate under section 45R for coverage provided from April 1, 2016 through December 31, 2016. Employer may also claim the credit under section 45R for coverage provided for its 2017 taxable year from January 1, 2017 through March 31, 2017 (in addition to any credit under section 45R for which Employer is eligible based on coverage provided from April 1 through December 31 of the 2017 taxable year).

Example 3. (i) Facts. Employer has a 2016 taxable year that begins January 1, 2016 and ends December 31, 2016, and a 2016 health plan year that begins May 1, 2016 and ends April 30, 2017. Employer provided coverage through a SHOP plan for 2015 and qualifies for, and claims, the credit for 2015. In 2016, Employer provides coverage through a SHOP plan for January 2016. Beginning February 1 and through April 30, 2016, Employer provides coverage with a policy for the remainder of the plan year that would have qualified Employer for a credit under section 45R under the rules applicable to taxable years beginning before January 1, 2014. From May 1, 2016, through December 31, 2016 (the initial months of its plan year that begins May 1, 2016), and from January 1, 2017, through April 30, 2017, Employer provides coverage 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 at the 50 percent rate under section 45R for coverage provided from January 1, 2016, through December 31, 2016. Employer may not claim the credit under section 45R for coverage provided for its 2017 taxable year because its two-consecutive-taxable year period ends with 2016.

IV. LIST OF WISCONSIN COUNTIES

Pierce, Polk, St. Croix.

V. EFFECTIVE DATE

This notice is effective as of December 2, 2016 and applies to periods after December 31, 2015.

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).