

§ 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 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. Ac-

cordingly, 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, or any other member of the household of these owners and partners who qualifies as a dependent under section 152(d)(2)(H).

(iv) *Seasonal workers.* 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) *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.

(vi) *Former employees.* Premiums paid on behalf of a former employee with no hours of service may be treated as paid on behalf of an employee for purposes of calculating the credit (see § 1.45R-3) provided that, if so treated, the former employee is also treated as an employee for purposes of the uniform percentage requirement (see § 1.45R-4). For the treatment of terminated employees for purposes of determining employer eligibility for the credit, see § 1.45R-2(c).

(6) *Employer-computed composite rate.* The term *employer-computed composite rate* refers to a rate for a tier of coverage (such as employee-only, dependent 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 may be used in list billing to convert individual premiums for a tier of coverage into an employer-computed composite rate for that tier of coverage. See § 1.45R-4(b)(3).

(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 § 1.45R-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 or QHP.* The term *qualified health plan* or the term *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. Employers may apply a reasonable, good faith interpretation of the term seasonal worker and a reasonable good faith interpretation of 29 CFR 500.20(s)(1) (including as applied by analogy to workers and employment positions not otherwise covered under 29 CFR 500.20(s)(1)).

(17) *SHOP dependent coverage.* The term *SHOP dependent coverage* refers to coverage offered through SHOP separately to any individual who is or may become eligible for coverage under the terms of a group health plan offered through SHOP because of a relationship to a participant-employee, whether or not a dependent of the participant-employee under section 152 of the Internal Revenue Code. The term *SHOP dependent coverage* does not include coverage such as family coverage, which includes coverage of the participant-employee.

(18) *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.

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

(20) *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).

(21) *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, employee-only coverage, dependent coverage, and family coverage would constitute three separate tiers of coverage.

(22) *Tobacco surcharge.* The term *tobacco surcharge* means any allowable differential that is charged for insurance in the SHOP Exchange that is attributable to tobacco use as the term tobacco use is defined in 45 CFR 147.102(a)(1)(iv).

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

(24) *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).

(25) *Wellness program.* The term *wellness program* for purposes of section

45R means a program of health promotion or disease prevention subject to the requirements of § 54.9802-1(f).

(b) *Effective/applicability date.* This section is applicable for periods after 2013. For rules relating to certain plan years beginning in 2014, see § 1.45R-3(i).

[T.D. 9672, 79 FR 36646, June 30, 2014]

§ 1.45R-2 Eligibility for the credit.

(a) *Eligible small employer.* To be eligible for the credit under section 45R, 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 the employer's FTEs must not exceed an amount equal to twice the dollar amount in effect under § 1.45R-3(c)(2). For purposes of eligibility for the credit for taxable years beginning in or after 2014, a qualifying arrangement is an arrangement that requires an employer to make a non-elective 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 if it is not 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 an employer located in 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 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 such 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 employees who terminate 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