

§ 1.45R-5

26 CFR Ch. I (4-1-23 Edition)

only coverage satisfies the uniform percentage requirement, even though Employer is only contributing 25% toward SHOP dependent coverage.

Example 9. (i) Facts. Employer has five employees. Employer is located in a State that requires employers to pay 50% of employees' premium costs, but also requires that an employee's contribution not exceed a certain percentage of the employee's monthly gross earnings from that employer. Employer offers to pay 50% of the premium costs for all its employees, and to comply with the State law. Employer contributes more than 50% of the premium costs for two of its employees.

(ii) Conclusion. Employer satisfies the uniform percentage requirement because its failure to otherwise satisfy the uniform percentage requirement is attributable solely to compliance with the applicable State or local law.

Example 10. (i) Facts. Employer has three employees who all enroll in employee-only coverage. Employer is located in a State that has a tobacco surcharge on the premiums of employees who use tobacco. One of Employer's employees smokes. Employer contributes 50% of the employee-only premium costs, but does not cover any of the tobacco surcharge for the employee who smokes.

(ii) Conclusion. Employer's contribution of 50% toward the premium costs of employee-only coverage satisfies the uniform percentage requirement. Tobacco surcharges are not factored into premiums when calculating the uniform percentage requirement.

Example 11. (i) Facts. Employer has five employees who all enroll in employee-only coverage. Employer offers a wellness program that reduces the employee share of the premium for employees who participate in the wellness program. Employer contributes 50% of the premium costs of employee-only coverage for employees who do not participate in the wellness program and 55% of the premium costs of employee-only coverage for employees who participate in the wellness program. Three of the five employees participate in the wellness program.

(ii) Conclusion. Employer's contribution of 50% toward the premium costs of employee-only coverage for the two employees who do not participate in the wellness program and 55% toward the premium costs of employee-only coverage for three employees who participate in the wellness program satisfies the uniform percentage requirement because the additional 5% contribution due to the employees' participation in the wellness program is not taken into account. However, the additional 5% contributions are taken into account for purposes of calculating the credit.

(g) Effective/applicability date. This section is applicable for periods after

2013. For transition rules relating to certain plan years starting in 2014, see § 1.45R-3(i).

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

§ 1.45R-5 Claiming the credit.

(a) Claiming the credit. The credit is a general business credit. It is claimed on an eligible small employer's annual income tax return and offsets an employer's actual tax liability for the year. The credit is claimed by attaching Form 8941, "Credit for Small Employer Health Insurance Premiums," to the eligible small employer's income tax return or, in the case of a tax-exempt eligible small employer, by attaching Form 8941 to the employer's Form 990-T, "Exempt Organization Business Income Tax Return." To claim the credit, a tax-exempt eligible small employer must file a form 990-T with an attached Form 8941, even if a Form 990-T would not otherwise be required to be filed.

(b) Estimated tax payments and alternative minimum tax (AMT) liability. An eligible small employer may reflect the credit in determining estimated tax payments for the year in which the credit applies in accordance with the estimated tax rules as set forth in sections 6654 and 6655 and the applicable regulations. An eligible small employer may also use the credit to offset the employer's alternative minimum tax (AMT) liability for the year, if any, subject to certain limitations based on the amount of the employer's regular tax liability, AMT liability and other allowable credits. See section 38(c)(1), as modified by section 38(c)(4)(B)(vi). However, an eligible small employer, including a tax-exempt eligible small employer, may not reduce its deposits and payments of employment tax (that is, income tax required to be withheld under section 3402, social security and Medicare tax under sections 3101 and 3111, and federal unemployment tax under section 3301) during the year in anticipation of the credit.

(c) Reduction of section 162 deduction. No deduction under section 162 is allowed for the eligible small employer for that portion of the health insurance premiums that is equal to the amount of the credit under § 1.45R-2.

(d) *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]

§ 1.46-1 Determination of amount.

(a) *Effective dates*—(1) *In general.* This section is effective for taxable years beginning after December 31, 1975. However, transitional rules under paragraph (g) of this section are effective for certain earlier taxable years.

(2) *Acts covered.* This section reflects changes made by the following Acts of Congress:

Act and Section

Tax Reduction Act of 1975, section 301.

Tax Reform Act of 1976, sections 802, 1701, 1703.

Revenue Act of 1978, sections 311, 312, 315.

Energy Tax Act of 1978, section 301.

Economic Recovery Tax Act of 1981, section 212.

Technical Corrections Act of 1982, section 102(f).

Tax Reform Act of 1986, section 251.

(3) *Prior regulations.* For taxable years beginning before January 1, 1976, see 26 CFR 1.46-1 (Rev. as of April 1, 1979). Those regulations do not reflect changes made by Pub. L. 89-384, Pub. L. 89-389, and Pub. L. 91-172.

(b) *General rule.* The amount of investment credit (credit) allowed by section 38 for the taxable year is the portion of credit available under section 46(a)(1) that does not exceed the limitation based on tax under section 46(a)(3).

(c) *Credit available.* The credit available for the taxable year is the sum of—

(1) Unused credit carried over from prior taxable years under section 46(b) (carryovers).

(2) Amount of credit determined under section 46(a)(2) for the taxable year (credit earned), and

(3) Unused credit carried back from succeeding taxable years under section 46(b) (carrybacks).

(d) *Credit earned.* The credit earned for the taxable year is the sum of the following percentages of qualified investment (as determined under section 46 (c) and (d))—

(1) The regular percentage (as determined under section 46),

(2) For energy property, the energy percentage (as determined under section 46), and

(3) For the portion of the basis of a qualified rehabilitated building (as defined in § 1.48-12(b)) that is attributable to qualified rehabilitation expenditures (as defined in § 1.48-12(c)), the rehabilitation percentage (as determined under section 46(b)(4)).

(e) *Designation of credits.* The credit available for the taxable year is designated as follows:

(1) The credit attributable to the regular percentage is the “regular credit”.

(2) The credit attributable to the ESOP percentage is the “ESOP credit”.

(3) The credit attributable to the energy percentage for energy property other than solar or wind is the “non-refundable energy credit”.

(4) The credit attributable to the energy percentage for solar or wind energy property is the “refundable energy credit”.

(5) The credit attributable to the rehabilitation percentage for qualified rehabilitation expenditures is the rehabilitation investment credit.

(f) *Special rules for certain energy property.* Energy property is defined in section 48(1). Under section 46(a)(2)(D), energy property that is section 38 property solely by reason of section 48(1)(1) qualifies only for the energy credit. Other energy property qualifies for both the regular credit (and, if applicable, the ESOP credit) and the energy credit. For limitation on the energy percentage for property financed by industrial development bonds, see section 48(1)(11).

(g) *Transitional rule for regular and ESOP credit*—(1) *In general.* Although section 46(a)(2) was amended by section 301(a)(1) of the Energy Tax Act of 1977 to eliminate the transitional rules under section 46(a)(2)(D), those rules still apply in certain instances. Section 46(a)(2)(D) was added by section 301(a) of the Tax Reduction Act of 1975 and amended by section 802(a) of the Tax Reform Act of 1976.

(2) *Regular credit.* Under section 46(a)(2)(D), the regular credit is 10 percent and applies for the following property: