

this section [amending this section] shall apply to calendar years beginning after 2009.”

#### EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-432, div. A, title I, §102(c), Dec. 20, 2006, 120 Stat. 2934, provided that: “The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Dec. 20, 2006].”

#### EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-357, title II, §221(c), Oct. 22, 2004, 118 Stat. 1431, provided that:

“(1) TARGETED AREAS.—The amendment made by subsection (a) [amending this section] shall apply to designations made by the Secretary of the Treasury after the date of the enactment of this Act [Oct. 22, 2004].

“(2) TRACTS WITH LOW POPULATION.—The amendment made by subsection (b) [amending this section] shall apply to investments made after the date of the enactment of this Act [Oct. 22, 2004].”

Pub. L. 108-357, title II, §223(b), Oct. 22, 2004, 118 Stat. 1432, provided that: “The amendment made by this section [amending this section] shall take effect as if included in the amendment made by section 121(a) of the Community Renewal Tax Relief Act of 2000 [Pub. L. 106-554, §1(a)(7) [title I, §121(a)], enacting this section].”

#### EFFECTIVE DATE

Section applicable to investments made after Dec. 31, 2000, see §1(a)(7) [title I, §121(e)] of Pub. L. 106-554, set out as a Effective Date of 2000 Amendment note under section 38 of this title.

#### SAVINGS PROVISION

Amendment by section 401(d)(4)(B)(iii) of Pub. L. 115-141 not applicable to certain obligations issued, DC Zone assets acquired, or principal residences acquired before Jan. 1, 2012, see section 401(d)(4)(C) of Pub. L. 115-141, set out as a note under former section 1400 of this title.

For provisions that nothing in amendment by section 401(d)(4)(B)(iii) of Pub. L. 115-141 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Mar. 23, 2018, for purposes of determining liability for tax for periods ending after Mar. 23, 2018, see section 401(e) of Pub. L. 115-141, set out as a note under section 23 of this title.

#### SPECIAL RULE FOR ALLOCATION OF INCREASED 2008 LIMITATION

Pub. L. 111-5, div. B, title I, §1403(b), Feb. 17, 2009, 123 Stat. 352, provided that: “The amount of the increase in the new markets tax credit limitation for calendar year 2008 by reason of the amendments made by subsection (a) [amending this section] shall be allocated in accordance with section 45D(f)(2) of the Internal Revenue Code of 1986 to qualified community development entities (as defined in section 45D(c) of such Code) which—

“(1) submitted an allocation application with respect to calendar year 2008, and

“(2)(A) did not receive an allocation for such calendar year, or

“(B) received an allocation for such calendar year in an amount less than the amount requested in the allocation application.”

#### GUIDANCE ON ALLOCATION OF NATIONAL LIMITATION

Pub. L. 106-554, §1(a)(7) [title I, §121(f)], Dec. 21, 2000, 114 Stat. 2763, 2763A-610, provided that: “Not later than 120 days after the date of the enactment of this Act [Dec. 21, 2000], the Secretary of the Treasury or the Secretary’s delegate shall issue guidance which specifies—

“(1) how entities shall apply for an allocation under section 45D(f)(2) of the Internal Revenue Code of 1986, as added by this section;

“(2) the competitive procedure through which such allocations are made; and

“(3) the actions that such Secretary or delegate shall take to ensure that such allocations are properly made to appropriate entities.”

#### AUDIT AND REPORT

Pub. L. 106-554, §1(a)(7) [title I, §121(g)], Dec. 21, 2000, 114 Stat. 2763, 2763A-610, provided that: “Not later than January 31 of 2004, 2007, and 2010, the Comptroller General of the United States shall, pursuant to an audit of the new markets tax credit program established under section 45D of the Internal Revenue Code of 1986 (as added by subsection (a)), report to Congress on such program, including all qualified community development entities that receive an allocation under the new markets credit under such section.”

### § 45E. Small employer pension plan startup costs

#### (a) General rule

For purposes of section 38, in the case of an eligible employer, the small employer pension plan startup cost credit determined under this section for any taxable year is an amount equal to 50 percent of the qualified startup costs paid or incurred by the taxpayer during the taxable year.

#### (b) Dollar limitation

The amount of the credit determined under this section for any taxable year shall not exceed—

(1) for the first credit year and each of the 2 taxable years immediately following the first credit year, the greater of—

(A) \$500, or

(B) the lesser of—

(i) \$250 for each employee of the eligible employer who is not a highly compensated employee (as defined in section 414(q)) and who is eligible to participate in the eligible employer plan maintained by the eligible employer, or

(ii) \$5,000, and

(2) zero for any other taxable year.

#### (c) Eligible employer

For purposes of this section—

##### (1) In general

The term “eligible employer” has the meaning given such term by section 408(p)(2)(C)(i).

##### (2) Requirement for new qualified employer plans

Such term shall not include an employer if, during the 3-taxable year period immediately preceding the 1st taxable year for which the credit under this section is otherwise allowable for a qualified employer plan of the employer, the employer or any member of any controlled group including the employer (or any predecessor of either) established or maintained a qualified employer plan with respect to which contributions were made, or benefits were accrued, for substantially the same employees as are in the qualified employer plan.

#### (d) Other definitions

For purposes of this section—

##### (1) Qualified startup costs

###### (A) In general

The term “qualified startup costs” means any ordinary and necessary expenses of an

eligible employer which are paid or incurred in connection with—

- (i) the establishment or administration of an eligible employer plan, or
- (ii) the retirement-related education of employees with respect to such plan.

**(B) Plan must have at least 1 participant**

Such term shall not include any expense in connection with a plan that does not have at least 1 employee eligible to participate who is not a highly compensated employee.

**(2) Eligible employer plan**

The term “eligible employer plan” means a qualified employer plan within the meaning of section 4972(d).

**(3) First credit year**

The term “first credit year” means—

- (A) the taxable year which includes the date that the eligible employer plan to which such costs relate becomes effective with respect to the eligible employer, or
- (B) at the election of the eligible employer, the taxable year preceding the taxable year referred to in subparagraph (A).

**(e) Special rules**

For purposes of this section—

**(1) Aggregation rules**

All persons treated as a single employer under subsection (a) or (b) of section 52, or subsection (m) or (o) of section 414, shall be treated as one person. All eligible employer plans shall be treated as 1 eligible employer plan.

**(2) Disallowance of deduction**

No deduction shall be allowed—

- (A) for that portion of the qualified start-up costs paid or incurred for the taxable year which is equal to so much of the portion of the credit determined under subsection (a) as is properly allocable to such costs, and
- (B) for that portion of the employer contributions by the employer for the taxable year which is equal to so much of the credit increase determined under subsection (f) as is properly allocable to such contributions.

**(3) Election not to claim credit**

This section shall not apply to a taxpayer for any taxable year if such taxpayer elects to have this section not apply for such taxable year.

**(4) Increased credit for certain small employers**

In the case of an employer which would be an eligible employer under subsection (c) if section 408(p)(2)(C)(i) was applied by substituting “50 employees” for “100 employees”, subsection (a) shall be applied by substituting “100 percent” for “50 percent”.

**(f) Additional credit for employer contributions by certain eligible employers**

**(1) In general**

In the case of an eligible employer, the credit allowed for the taxable year under subsection (a) (determined without regard to this

subsection) shall be increased by an amount equal to the applicable percentage of employer contributions (other than any elective deferrals (as defined in section 402(g)(3)) by the employer to an eligible employer plan (other than a defined benefit plan (as defined in section 414(j))).

**(2) Limitations**

**(A) Dollar limitation**

The amount determined under paragraph (1) (before the application of subparagraph (B)) with respect to any employee of the employer shall not exceed \$1,000.

**(B) Credit phase-in**

In the case of any eligible employer which had for the preceding taxable year more than 50 employees, the amount determined under paragraph (1) (without regard to this subparagraph) shall be reduced by an amount equal to the product of—

- (i) the amount otherwise so determined under paragraph (1), multiplied by
- (ii) a percentage equal to 2 percentage points for each employee of the employer for the preceding taxable year in excess of 50 employees.

**(C) Wage limitation**

**(i) In general**

No contributions with respect to any employee who receives wages from the employer for the taxable year in excess of \$100,000 may be taken into account for such taxable year under subparagraph (A).

**(ii) Wages**

For purposes of the preceding sentence, the term “wages” has the meaning given such term by section 3121(a).

**(iii) Inflation adjustment**

In the case of any taxable year beginning in a calendar year after 2023, the \$100,000 amount under clause (i) shall be increased by an amount equal to—

- (I) such dollar amount, multiplied by
- (II) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting “calendar year 2007” for “calendar year 2016” in subparagraph (A)(ii) thereof.

If any amount as adjusted under this clause is not a multiple of \$5,000, such amount shall be rounded to the next lowest multiple of \$5,000.

**(3) Applicable percentage**

For purposes of this section, the applicable percentage for the taxable year during which the eligible employer plan is established with respect to the eligible employer shall be 100 percent, and for taxable years thereafter shall be determined under the following table:

In the case of the following taxable year beginning after the taxable year during which plan is established with respect to the eligible employer:	The applicable percentage shall be:
1st .....	100%

<b>In the case of the following taxable year beginning after the taxable year during which plan is established with respect to the eligible employer:</b>	<b>The applicable percentage shall be:</b>
2nd .....	75%
3rd .....	50%
4th .....	25%
Any taxable year thereafter .....	0%

**(4) Determination of eligible employer; number of employees**

For purposes of this subsection, whether an employer is an eligible employer and the number of employees of an employer shall be determined under the rules of subsection (c), except that paragraph (2) thereof shall only apply to the taxable year during which the eligible employer plan to which this section applies is established with respect to the eligible employer.

(Added Pub. L. 107-16, title VI, §619(a), June 7, 2001, 115 Stat. 108; amended Pub. L. 107-147, title IV, §411(n)(1), Mar. 9, 2002, 116 Stat. 48; Pub. L. 116-94, div. O, title I, §104(a), Dec. 20, 2019, 133 Stat. 3147; Pub. L. 117-328, div. T, title I, §§102(a)-(c), 111(a), Dec. 29, 2022, 136 Stat. 5277, 5278, 5293.)

**INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS**

*For inflation adjustment of certain items in this section, see Internal Revenue Notices listed in a table under section 401 of this title.*

**Editorial Notes**

**AMENDMENTS**

2022—Subsec. (d)(3)(A). Pub. L. 117-328, §111(a), substituted “effective with respect to the eligible employer” for “effective”.

Subsec. (e)(2). Pub. L. 117-328, §102(c), amended par. (2) generally. Prior to amendment, text read as follows: “No deduction shall be allowed for that portion of the qualified startup costs paid or incurred for the taxable year which is equal to the credit determined under subsection (a).”

Subsec. (e)(4). Pub. L. 117-328, §102(a), added par. (4). Subsec. (f). Pub. L. 117-328, §102(b), added subsec. (f). 2019—Subsec. (b)(1). Pub. L. 116-94 amended par. (1) generally. Prior to amendment, par. (1) read as follows: “\$500 for the first credit year and each of the 2 taxable years immediately following the first credit year, and”.

2002—Subsec. (e)(1). Pub. L. 107-147 substituted “subsection (m)” for “subsection (n)”.

**Statutory Notes and Related Subsidiaries**

**EFFECTIVE DATE OF 2022 AMENDMENT**

Pub. L. 117-328, div. T, title I, §102(d), Dec. 29, 2022, 136 Stat. 5278, provided that: “The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2022.”

Pub. L. 117-328, div. T, title I, §111(b), Dec. 29, 2022, 136 Stat. 5293, provided that: “The amendment made by this section [amending this section] shall take effect as if included in the enactment of section 104 of the Setting Every Community Up for Retirement Enhancement Act of 2019 [div. O of Pub. L. 116-94, see Effective Date of 2019 Amendment note below].”

**EFFECTIVE DATE OF 2019 AMENDMENT**

Pub. L. 116-94, div. O, title I, §104(b), Dec. 20, 2019, 133 Stat. 3147, provided that: “The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2019.”

**EFFECTIVE DATE OF 2002 AMENDMENT**

Amendment by Pub. L. 107-147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107-16, to which such amendment relates, see section 411(x) of Pub. L. 107-147, set out as a note under section 25B of this title.

**EFFECTIVE DATE**

Section applicable to costs paid or incurred in taxable years beginning after Dec. 31, 2001, with respect to qualified employer plans first effective after such date, see section 619(d) of Pub. L. 107-16, as amended, set out as an Effective Date of 2001 Amendment note under section 38 of this title.

**§ 45F. Employer-provided child care credit**

**(a) In general**

For purposes of section 38, the employer-provided child care credit determined under this section for the taxable year is an amount equal to the sum of—

- (1) 25 percent of the qualified child care expenditures, and
- (2) 10 percent of the qualified child care resource and referral expenditures,

of the taxpayer for such taxable year.

**(b) Dollar limitation**

The credit allowable under subsection (a) for any taxable year shall not exceed \$150,000.

**(c) Definitions**

For purposes of this section—

**(1) Qualified child care expenditure**

**(A) In general**

The term “qualified child care expenditure” means any amount paid or incurred—

(i) to acquire, construct, rehabilitate, or expand property—

(I) which is to be used as part of a qualified child care facility of the taxpayer,

(II) with respect to which a deduction for depreciation (or amortization in lieu of depreciation) is allowable, and

(III) which does not constitute part of the principal residence (within the meaning of section 121) of the taxpayer or any employee of the taxpayer,

(ii) for the operating costs of a qualified child care facility of the taxpayer, including costs related to the training of employees, to scholarship programs, and to the providing of increased compensation to employees with higher levels of child care training, or

(iii) under a contract with a qualified child care facility to provide child care services to employees of the taxpayer.

**(B) Fair market value**

The term “qualified child care expenditures” shall not include expenses in excess of the fair market value of such care.

**(2) Qualified child care facility**

**(A) In general**

The term “qualified child care facility” means a facility—

- (i) the principal use of which is to provide child care assistance, and