(2) determine whether a facility satisfies the requirements under subsection (d)(1) during such taxable year.

(Added Pub. L. 110–343, div. B, title I, §115(a), Oct. 3, 2008, 122 Stat. 3829; amended Pub. L. 111–5, div. B, title I, §1131(a), (b), Feb. 17, 2009, 123 Stat. 325; Pub. L. 113–295, div. A, title II, §209(j)(1), Dec. 19, 2014, 128 Stat. 4030; Pub. L. 115–123, div. D, title II, §41119(a), Feb. 9, 2018, 132 Stat. 162.)

INFLATION ADJUSTED ITEMS FOR CERTAIN TAX YEARS

For inflation adjustment of certain items in this section, see Internal Revenue Notices listed in a table below.

REFERENCES IN TEXT

The date of the enactment of the Bipartisan Budget Act of 2018 and the date of the enactment of such Act, referred to in text, is the date of enactment of Pub. L. 115–123, which was approved Feb. 9, 2018.

AMENDMENTS

2018—Pub. L. 115–123 amended section generally. Prior to amendment, section related to credit for carbon dioxide sequestration.

2014—Subsec. (d)(2). Pub. L. 113–295 substituted ''Administrator of the Environmental Protection Agency, the Secretary of Energy, and the Secretary of the Interior, shall establish'' for ''Administrator of the Environmental Protection Agency the Secretary of Energy, and the Secretary of the Interior,, shall establish''.

2009—Subsec. (a)(1)(B). Pub. L. 111–5, §1131(b)(2), inserted ''and not used by the taxpayer as described in paragraph (2)(B)'' after ''storage''.

Subsec. (a)(2)(C). Pub. L. 111–5, §1131(a), added subpar. (C).

Subsec. (d)(2). Pub. L. 111–5, §1131(b)(1), inserted ''the Secretary of Energy, and the Secretary of the Interior,'' after ''Environmental Protection Agency'' and substituted ''paragraph (1)(B) or (2)(C) of subsection (a)'' for ''subsection (a)(1)(B)'' and '', oil and gas reservoirs, and unminable coal seams'' for ''and unminable coal seems''.

Subsec. (e). Pub. L. 111–5, §1131(b)(3), substituted ''taken into account in accordance with subsection (a)'' for ''captured and disposed of or used as a tertiary injectant''.

EFFECTIVE DATE OF 2018 AMENDMENT

Pub. L. 115–123, div. D, title II, §41119(b), Feb. 9, 2018, 132 Stat. 168, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2017.''

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113–295 effective as if included in the provisions of the American Recovery and Reinvestment Tax Act of 2009, Pub. L. 111–5, div. B, title I, to which such amendment relates, see section 209(k) of Pub. L. 113–295, set out as a note under section 24 of this title.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, §1131(c), Feb. 17, 2009, 123 Stat. 325, provided that: ''The amendments made by this section [amending this section] shall apply to carbon dioxide captured after the date of the enactment of this Act [Feb. 17, 2009].''

EFFECTIVE DATE

Section applicable to carbon dioxide captured after Oct. 3, 2008, see section 115(d) of Pub. L. 110–343, set out as an Effective Date of 2008 Amendment note under section 38 of this title.

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

Provisions relating to inflation adjustment of items in this section for certain years were contained in the following:

2019—Internal Revenue Notice 2019–31.
2018—Internal Revenue Notice 2018–40.
2017—Internal Revenue Notice 2017–32.
2016—Internal Revenue Notice 2016–53.
2015—Internal Revenue Notice 2015–44.
2014—Internal Revenue Notice 2014–40.
2013—Internal Revenue Notice 2013–34.
2012—Internal Revenue Notice 2012—42.
2011—Internal Revenue Notice 2011–50.
2010—Internal Revenue Notice 2010–75.

§ 45R. Employee health insurance expenses of small employers

(a) General rule

For purposes of section 38, in the case of an eligible small employer, the small employer health insurance credit determined under this section for any taxable year in the credit period is the amount determined under subsection (b).

(b) Health insurance credit amount

Subject to subsection (c), the amount determined under this subsection with respect to any eligible small employer is equal to 50 percent (35 percent in the case of a tax-exempt eligible small employer) of the lesser of—

(1) the aggregate amount of nonelective contributions the employer made on behalf of its employees during the taxable year under the arrangement described in subsection (d)(4) for premiums for qualified health plans offered by the employer to its employees through an Exchange, or

(2) the aggregate amount of nonelective contributions which the employer would have made during the taxable year under the arrangement if each employee taken into account under paragraph (1) had enrolled in a qualified health plan which had a premium equal to the average premium (as determined by the Secretary of Health and Human Services) for the small group market in the rating area in which the employee enrolls for coverage.

(c) Phaseout of credit amount based on number of employees and average wages

The amount of the credit determined under subsection (b) without regard to this subsection shall be reduced (but not below zero) by the sum of the following amounts:

(1) Such amount multiplied by a fraction the numerator of which is the total number of full-time equivalent employees of the employer in excess of 10 and the denominator of which is 15.

(2) Such amount multiplied by a fraction the numerator of which is the average annual wages of the employer in excess of the dollar amount in effect under subsection (d)(3)(B) and the denominator of which is such dollar amount.

(d) Eligible small employer

For purposes of this section—

(1) In general

The term ''eligible small employer'' means, with respect to any taxable year, an employer—

(A) which has no more than 25 full-time equivalent employees for the taxable year,

(B) the average annual wages of which do not exceed an amount equal to twice the dollar amount in effect under paragraph (3)(B) for the taxable year, and

(C) which has in effect an arrangement described in paragraph (4).

(2) Full-time equivalent employees

(A) In general

The term ''full-time equivalent employees'' means a number of employees equal to the number determined by dividing—

(i) the total number of hours of service for which wages were paid by the employer to employees during the taxable year, by

(ii) 2,080.

Such number shall be rounded to the next lowest whole number if not otherwise a whole number.

(B) Excess hours not counted

If an employee works in excess of 2,080 hours of service during any taxable year, such excess shall not be taken into account under subparagraph (A).

(C) Hours of service

The Secretary, in consultation with the Secretary of Labor, shall prescribe such regulations, rules, and guidance as may be necessary to determine the hours of service of an employee, including rules for the application of this paragraph to employees who are not compensated on an hourly basis.

(3) Average annual wages

(A) In general

The average annual wages of an eligible small employer for any taxable year is the amount determined by dividing—

(i) the aggregate amount of wages which were paid by the employer to employees during the taxable year, by

(ii) the number of full-time equivalent employees of the employee determined under paragraph (2) for the taxable year.

Such amount shall be rounded to the next lowest multiple of $1,000 if not otherwise such a multiple.

(B) Dollar amount

For purposes of paragraph (1)(B) and subsection (c)(2)—

(i) 2010, 2011, 2012, and 2013

The dollar amount in effect under this paragraph for taxable years beginning in 2010, 2011, 2012, or 2013 is $25,000.

(ii) Subsequent years

In the case of a taxable year beginning in a calendar year after 2013, the dollar amount in effect under this paragraph shall be equal to $25,000, multiplied by the cost-of-living adjustment under section 1(f)(3) for the calendar year, determined by substituting ''calendar year 2012'' for ''calendar year 2016'' in subparagraph (A)(ii) thereof.

(4) Contribution arrangement

An arrangement is described in this paragraph if it requires an eligible small employer to make a nonelective contribution on behalf of each employee who enrolls in a qualified health plan offered to employees by the employer through an exchange in an amount equal to a uniform percentage (not less than 50 percent) of the premium cost of the qualified health plan.

(5) Seasonal worker hours and wages not counted

For purposes of this subsection—

(A) In general

The number of hours of service worked by, and wages paid to, a seasonal worker of an employer shall not be taken into account in determining the full-time equivalent employees and average annual wages of the employer unless the worker works for the employer on more than 120 days during the taxable year.

(B) Definition of 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 workers covered by section 500.20(s)(1) of title 29, Code of Federal Regulations and retail workers employed exclusively during holiday seasons.

(e) Other rules and definitions

For purposes of this section—

(1) Employee

(A) Certain employees excluded

The term ''employee'' shall not include—

(i) an employee within the meaning of section 401(c)(1),

(ii) any 2-percent shareholder (as defined in section 1372(b)) of an eligible small business which is an S corporation,

(iii) any 5-percent owner (as defined in section 416(i)(1)(B)(i)) of an eligible small business, or

(iv) any individual who bears any of the relationships described in subparagraphs (A) through (G) of section 152(d)(2) to, or is a dependent described in section 152(d)(2)(H) of, an individual described in clause (i), (ii), or (iii).

(B) Leased employees

The term ''employee'' shall include a leased employee within the meaning of section 414(n).

(2) Credit period

The term ''credit period'' means, with respect to any eligible small employer, the 2-consecutive-taxable year period beginning with the 1st taxable year in which the employer (or any predecessor) offers 1 or more qualified health plans to its employees through an Exchange.

(3) Nonelective contribution

The term ''nonelective contribution'' means an employer contribution other than an employer contribution pursuant to a salary reduction arrangement.

(4) Wages

The term ''wages'' has the meaning given such term by section 3121(a) (determined with-

out regard to any dollar limitation contained in such section).

(5) Aggregation and other rules made applicable

(A) Aggregation rules

All employers treated as a single employer under subsection (b), (c), (m), or (*o*) of section 414 shall be treated as a single employer for purposes of this section.

(B) Other rules

Rules similar to the rules of subsections (c), (d), and (e) of section 52 shall apply.

(f) Credit made available to tax-exempt eligible small employers

(1) In general

In the case of a tax-exempt eligible small employer, there shall be treated as a credit allowable under subpart C (and not allowable under this subpart) the lesser of—

(A) the amount of the credit determined under this section with respect to such employer, or

(B) the amount of the payroll taxes of the employer during the calendar year in which the taxable year begins.

(2) Tax-exempt eligible small employer

For purposes of this section, the term ''tax-exempt eligible small employer'' means an eligible small employer which is any organization described in section 501(c) which is exempt from taxation under section 501(a).

(3) Payroll taxes

For purposes of this subsection—

(A) In general

The term ''payroll taxes'' means—

(i) amounts required to be withheld from the employees of the tax-exempt eligible small employer under section 3401(a),

(ii) amounts required to be withheld from such employees under section 3101(b), and

(iii) amounts of the taxes imposed on the tax-exempt eligible small employer under section 3111(b).

(B) Special rule

A rule similar to the rule of section 24(d)(2)(C) shall apply for purposes of subparagraph (A).

(g) Application of section for calendar years 2010, 2011, 2012, and 2013

In the case of any taxable year beginning in 2010, 2011, 2012, or 2013, the following modifications to this section shall apply in determining the amount of the credit under subsection (a):

(1) No credit period required

The credit shall be determined without regard to whether the taxable year is in a credit period and for purposes of applying this section to taxable years beginning after 2013, no credit period shall be treated as beginning with a taxable year beginning before 2014.

(2) Amount of credit

The amount of the credit determined under subsection (b) shall be determined—

(A) by substituting ''35 percent (25 percent in the case of a tax-exempt eligible small employer)'' for ''50 percent (35 percent in the case of a tax-exempt eligible small employer)'',

(B) by reference to an eligible small employer's nonelective contributions for premiums paid for health insurance coverage (within the meaning of section 9832(b)(1)) of an employee, and

(C) by substituting for the average premium determined under subsection (b)(2) the amount the Secretary of Health and Human Services determines is the average premium for the small group market in the State in which the employer is offering health insurance coverage (or for such area within the State as is specified by the Secretary).

(3) Contribution arrangement

An arrangement shall not fail to meet the requirements of subsection (d)(4) solely because it provides for the offering of insurance outside of an Exchange.

(h) Insurance definitions

Any term used in this section which is also used in the Public Health Service Act or subtitle A of title I of the Patient Protection and Affordable Care Act shall have the meaning given such term by such Act or subtitle.

(i) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this section, including regulations to prevent the avoidance of the 2-year limit on the credit period through the use of successor entities and the avoidance of the limitations under subsection (c) through the use of multiple entities.

(Added and amended Pub. L. 111–148, title I, § 1421(a), title X, § 10105(e)(1), (2), Mar. 23, 2010, 124 Stat. 237, 906; Pub. L. 115–97, title I, § 11002(d)(1)(H), Dec. 22, 2017, 131 Stat. 2060.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

REFERENCES IN TEXT

The Public Health Service Act, referred to in subsec. (h), is act July 1, 1944, ch. 373, 58 Stat. 682, which is classified generally to chapter 6A (§ 201 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 201 of Title 42 and Tables.

The Patient Protection and Affordable Care Act, referred to in subsec. (h), is Pub. L. 111–148, Mar. 23, 2010, 124 Stat. 119. Subtitle A (§§ 1001 to 1004) of title I of the Act enacted sections 300gg–11 to 300gg–19, 300gg–93, and 300gg–94 of Title 42, The Public Health and Welfare, redesignated sections 300gg–4 to 300gg–7 of Title 42 as sections 300gg–25 to 300gg–28, respectively, of Title 42, and section 300gg–13 of Title 42 as section 300gg–9 of Title 42, amended former sections 300gg–11 and 300gg–12 and sections 300gg–21 to 300gg–23 of Title 42, and enacted provisions set out as a note under section 300gg–11 of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 18001 of Title 42 and Tables.

AMENDMENTS

2017—Subsec. (d)(3)(B)(ii). Pub. L. 115–97 substituted ''for 'calendar year 2016' in subparagraph (A)(ii)'' for ''for 'calendar year 1992' in subparagraph (B)''.

2010—Subsec. (d)(3)(B). Pub. L. 111–148, § 10105(e)(1), amended subpar. (B) generally, including dollar amount for taxable years beginning in 2010 in addition to dollar amounts for taxable years beginning in 2011, 2012, and 2013, and subsequent years.

Subsec. (g). Pub. L. 111–148, § 10105(e)(2), substituted ''2010, 2011'' for ''2011'' in heading and in introductory provisions.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–97 applicable to taxable years beginning after Dec. 31, 2017, see section 11002(e) of Pub. L. 115–97, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–148, title X, § 10105(e)(5), Mar. 23, 2010, 124 Stat. 907, provided that: ''The amendments made by this subsection [amending this section, section 280C of this title, and provisions set out as a note under section 38 of this title] shall take effect as if included in the enactment of section 1421 of this Act.''

EFFECTIVE DATE

Section applicable to amounts paid or incurred in taxable years beginning after Dec. 31, 2009, see section 1421(f)(1) of Pub. L. 111–148, set out as an Effective Date of 2010 Amendment note under section 38 of this title.

§ 45S. Employer credit for paid family and medical leave

(a) Establishment of credit

(1) In general

For purposes of section 38, in the case of an eligible employer, the paid family and medical leave credit is an amount equal to the applicable percentage of the amount of wages paid to qualifying employees during any period in which such employees are on family and medical leave.

(2) Applicable percentage

For purposes of paragraph (1), the term ''applicable percentage'' means 12.5 percent increased (but not above 25 percent) by 0.25 percentage points for each percentage point by which the rate of payment (as described under subsection (c)(1)(B)) exceeds 50 percent.

(b) Limitation

(1) In general

The credit allowed under subsection (a) with respect to any employee for any taxable year shall not exceed an amount equal to the product of the normal hourly wage rate of such employee for each hour (or fraction thereof) of actual services performed for the employer and the number of hours (or fraction thereof) for which family and medical leave is taken.

(2) Non-hourly wage rate

For purposes of paragraph (1), in the case of any employee who is not paid on an hourly wage rate, the wages of such employee shall be prorated to an hourly wage rate under regulations established by the Secretary.

(3) Maximum amount of leave subject to credit

The amount of family and medical leave that may be taken into account with respect to any employee under subsection (a) for any taxable year shall not exceed 12 weeks.

(c) Eligible employer

For purposes of this section—

(1) In general

The term ''eligible employer'' means any employer who has in place a written policy that meets the following requirements:

(A) The policy provides—

(i) in the case of a qualifying employee who is not a part-time employee (as defined in section 4980E(d)(4)(B)), not less than 2 weeks of annual paid family and medical leave, and

(ii) in the case of a qualifying employee who is a part-time employee, an amount of annual paid family and medical leave that is not less than an amount which bears the same ratio to the amount of annual paid family and medical leave that is provided to a qualifying employee described in clause (i) as—

(I) the number of hours the employee is expected to work during any week, bears to

(II) the number of hours an equivalent qualifying employee described in clause (i) is expected to work during the week.

(B) The policy requires that the rate of payment under the program is not less than 50 percent of the wages normally paid to such employee for services performed for the employer.

(2) Special rule for certain employers

(A) In general

An added employer shall not be treated as an eligible employer unless such employer provides paid family and medical leave in compliance with a written policy which ensures that the employer—

(i) will not interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under the policy, and

(ii) will not discharge or in any other manner discriminate against any individual for opposing any practice prohibited by the policy.

(B) Added employer; added employee

For purposes of this paragraph—

(i) Added employee

The term ''added employee'' means a qualifying employee who is not covered by title I of the Family and Medical Leave Act of 1993, as amended.

(ii) Added employer

The term ''added employer'' means an eligible employer (determined without regard to this paragraph), whether or not covered by that title I, who offers paid family and medical leave to added employees.

(3) Aggregation rule

All persons which are treated as a single employer under subsections (a) and (b) of section 52 shall be treated as a single taxpayer.

(4) Treatment of benefits mandated or paid for by state or local governments

For purposes of this section, any leave which is paid by a State or local government or re-