

19. Can an employer (other than a tax-exempt employer) claim the credit if it has no taxable income and no AMT liability for the year?

A. Generally, no. Except in the case of a tax-exempt employer, the credit for a year offsets only an employer's actual income tax liability or AMT liability, subject to certain limitations, for the year. However, as a general business credit, an unused credit amount can generally be carried back one year and carried forward 20 years. Because an unused credit amount cannot be carried back to a year before the effective date of the credit, though, an unused credit amount for 2010 can only be carried forward.

20. Can a tax-exempt employer claim the credit if it has no taxable income for the year?

A. Yes. For a tax-exempt employer, the credit is a refundable credit, so that even if the employer has no taxable income, the employer may receive a refund (so long as it does not exceed the income tax withholding and Medicare tax liability, as discussed in Q/A-6).

21. Can the credit be reflected in determining estimated tax payments for a year?

A. Yes.

22. Does taking the credit affect an employer's deduction for health insurance premiums?

A. Yes. In determining the employer's deduction for health insurance premiums, the amount of premiums that can be deducted is reduced by the amount of the credit.

23. May an employer reduce employment tax payments -- withheld income tax, social security tax and Medicare tax--during the year in anticipation of the credit?

A. No. The credit applies against income tax, not employment taxes.

Transition Relief for Tax Years Beginning in 2010

24. Is there any transition relief available for tax years beginning in 2010 to make it easier for taxpayers to meet the requirements for a qualifying arrangement?

A. Yes. In Notice 2010-44, the IRS and Treasury issued guidance providing that, for tax years beginning in 2010, the following transition relief applies with respect to the requirements for a qualifying arrangement described in Q/A-3:

(a) An employer that pays at least 50% of the premium for each employee enrolled in coverage offered to employees by the employer is deemed to satisfy the qualifying arrangement requirement even though the employer does not pay a uniform percentage of the premium for each such employee. Accordingly, if the employer otherwise satisfies the requirements for the credit described above, it will qualify for the credit even though the percentage of the premium it pays is not uniform for all such employees.

(b) The requirement that the employer pay at least 50% of the premium for an employee applies to the premium for single (employee-only) coverage for the employee. Therefore, if the employee is receiving single coverage, the employer satisfies the 50% requirement with respect to the employee if it pays at least 50% of the premium for that coverage for each employee receiving single coverage. If the employee is receiving coverage that is more expensive than single coverage, such as family or self-plus-one coverage, the employer satisfies the 50% requirement with respect to the employee if the employer pays an amount of the premium for such coverage that is no less than 50% of the premium for single coverage for that employee, even if it is less than 50% of the premium for the coverage the employee is actually receiving.

Example 15: For the 2010 tax year, a qualified employer has 9 FTEs with average annual wages of \$23,000 per FTE. Six employees are enrolled in single coverage and 3 employees are enrolled in family coverage. The premiums are \$8,000 for single coverage for the year and \$14,000 for family coverage for the year (which do not exceed the average premiums for the small group market in the employer's State). The employer pays 50% of the premium for single coverage for each employee enrolled in single or family coverage (50% x \$8,000 = \$4,000 for each employee). Thus, the employer pays \$4,000 of the premium for each of the 6 employees enrolled in single coverage and \$4,000 of the premium for each of the 3 employees enrolled in family coverage. The employer is deemed to satisfy the uniformity requirement for a qualifying arrangement under the transition relief rule.

Example 16: Same facts as immediately preceding Example, except that the employer pays 50% of the premium for employees enrolled in single coverage (\$4,000 for each of those 6 employees) but pays none of the premium for employees enrolled in family coverage. The employer does not satisfy the uniformity requirement for a qualifying arrangement.

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