

1 **PART II—SMALL BUSINESS TAX CREDIT**

2 **SEC. 1421. CREDIT FOR EMPLOYEE HEALTH INSURANCE EX-**
3 **PENSES OF SMALL BUSINESSES.**

4 *(a) IN GENERAL.—Subpart D of part IV of subchapter*
5 *A of chapter 1 of the Internal Revenue Code of 1986 (relat-*
6 *ing to business-related credits) is amended by inserting*
7 *after section 45Q the following:*

8 **“SEC. 45R. EMPLOYEE HEALTH INSURANCE EXPENSES OF**
9 **SMALL EMPLOYERS.**

10 *“(a) GENERAL RULE.—For purposes of section 38, in*
11 *the case of an eligible small employer, the small employer*
12 *health insurance credit determined under this section for*
13 *any taxable year in the credit period is the amount deter-*
14 *mined under subsection (b).*

15 *“(b) HEALTH INSURANCE CREDIT AMOUNT.—Subject*
16 *to subsection (c), the amount determined under this sub-*
17 *section with respect to any eligible small employer is equal*
18 *to 50 percent (35 percent in the case of a tax-exempt eligible*
19 *small employer) of the lesser of—*

20 *“(1) the aggregate amount of nonelective con-*
21 *tributions the employer made on behalf of its employ-*
22 *ees during the taxable year under the arrangement de-*
23 *scribed in subsection (d)(4) for premiums for quali-*
24 *fied health plans offered by the employer to its em-*
25 *ployees through an Exchange, or*

1 “(2) *the aggregate amount of nonelective con-*
2 *tributions which the employer would have made dur-*
3 *ing the taxable year under the arrangement if each*
4 *employee taken into account under paragraph (1) had*
5 *enrolled in a qualified health plan which had a pre-*
6 *mium equal to the average premium (as determined*
7 *by the Secretary of Health and Human Services) for*
8 *the small group market in the rating area in which*
9 *the employee enrolls for coverage.*

10 “(c) *PHASEOUT OF CREDIT AMOUNT BASED ON NUM-*
11 *BER OF EMPLOYEES AND AVERAGE WAGES.—The amount*
12 *of the credit determined under subsection (b) without regard*
13 *to this subsection shall be reduced (but not below zero) by*
14 *the sum of the following amounts:*

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

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

24 “(d) *ELIGIBLE SMALL EMPLOYER.—For purposes of*
25 *this section—*

1 “(1) *IN GENERAL.*—*The term ‘eligible small em-*
2 *ployer’ means, with respect to any taxable year, an*
3 *employer—*

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

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

10 “(C) *which has in effect an arrangement de-*
11 *scribed in paragraph (4).*

12 “(2) *FULL-TIME EQUIVALENT EMPLOYEES.*—

13 “(A) *IN GENERAL.*—*The term ‘full-time*
14 *equivalent employees’ means a number of em-*
15 *ployees equal to the number determined by divid-*
16 *ing—*

17 “(i) *the total number of hours of serv-*
18 *ice for which wages were paid by the em-*
19 *ployer to employees during the taxable year,*
20 *by*

21 “(ii) *2,080.*

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

24 “(B) *EXCESS HOURS NOT COUNTED.*—*If an*
25 *employee works in excess of 2,080 hours of serv-*

1 *ice during any taxable year, such excess shall not*
2 *be taken into account under subparagraph (A).*

3 *“(C) HOURS OF SERVICE.—The Secretary,*
4 *in consultation with the Secretary of Labor,*
5 *shall prescribe such regulations, rules, and guid-*
6 *ance as may be necessary to determine the hours*
7 *of service of an employee, including rules for the*
8 *application of this paragraph to employees who*
9 *are not compensated on an hourly basis.*

10 *“(3) AVERAGE ANNUAL WAGES.—*

11 *“(A) IN GENERAL.—The average annual*
12 *wages of an eligible small employer for any tax-*
13 *able year is the amount determined by divid-*
14 *ing—*

15 *“(i) the aggregate amount of wages*
16 *which were paid by the employer to employ-*
17 *ees during the taxable year, by*

18 *“(ii) the number of full-time equivalent*
19 *employees of the employer determined under*
20 *paragraph (2) for the taxable year.*

21 *Such amount shall be rounded to the next lowest*
22 *multiple of \$1,000 if not otherwise such a mul-*
23 *tiiple.*

24 *“(B) DOLLAR AMOUNT.—For purposes of*
25 *paragraph (1)(B)—*

1 “(i) 2011, 2012, AND 2013.—The dollar
2 amount in effect under this paragraph for
3 taxable years beginning in 2011, 2012, or
4 2013 is \$20,000.

5 “(ii) *SUBSEQUENT YEARS.*—In the
6 case of a taxable year beginning in a cal-
7 endar year after 2013, the dollar amount in
8 effect under this paragraph shall be equal to
9 \$20,000, multiplied by the cost-of-living ad-
10 justment determined under section 1(f)(3)
11 for the calendar year, determined by sub-
12 stituting ‘calendar year 2012’ for ‘calendar
13 year 1992’ in subparagraph (B) thereof.

14 “(4) *CONTRIBUTION ARRANGEMENT.*—An ar-
15 rangement is described in this paragraph if it re-
16 quires an eligible small employer to make a nonelec-
17 tive contribution on behalf of each employee who en-
18 rolls in a qualified health plan offered to employees
19 by the employer through an exchange in an amount
20 equal to a uniform percentage (not less than 50 per-
21 cent) of the premium cost of the qualified health plan.

22 “(5) *SEASONAL WORKER HOURS AND WAGES NOT*
23 *COUNTED.*—For purposes of this subsection—

24 “(A) *IN GENERAL.*—The number of hours of
25 service worked by, and wages paid to, a seasonal

1 worker of an employer shall not be taken into ac-
2 count in determining the full-time equivalent
3 employees and average annual wages of the em-
4 ployer unless the worker works for the employer
5 on more than 120 days during the taxable year.

6 “(B) DEFINITION OF SEASONAL WORKER.—
7 The term ‘seasonal worker’ means a worker who
8 performs labor or services on a seasonal basis as
9 defined by the Secretary of Labor, including
10 workers covered by section 500.20(s)(1) of title
11 29, Code of Federal Regulations and retail work-
12 ers employed exclusively during holiday seasons.

13 “(e) OTHER RULES AND DEFINITIONS.—For purposes
14 of this section—

15 “(1) EMPLOYEE.—

16 “(A) CERTAIN EMPLOYEES EXCLUDED.—
17 The term ‘employee’ shall not include—

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

20 “(ii) any 2-percent shareholder (as de-
21 fined in section 1372(b)) of an eligible small
22 business which is an S corporation,

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

1 “(iv) any individual who bears any of
2 the relationships described in subpara-
3 graphs (A) through (G) of section 152(d)(2)
4 to, or is a dependent described in section
5 152(d)(2)(II) of, an individual described in
6 clause (i), (ii), or (iii).

7 “(B) LEASED EMPLOYEES.—The term ‘em-
8 ployee’ shall include a leased employee within
9 the meaning of section 414(n).

10 “(2) CREDIT PERIOD.—The term ‘credit period’
11 means, with respect to any eligible small employer,
12 the 2-consecutive-taxable year period beginning with
13 the 1st taxable year in which the employer (or any
14 predecessor) offers 1 or more qualified health plans to
15 its employees through an Exchange.

16 “(3) NONELECTIVE CONTRIBUTION.—The term
17 ‘nonelective contribution’ means an employer con-
18 tribution other than an employer contribution pursu-
19 ant to a salary reduction arrangement.

20 “(4) WAGES.—The term ‘wages’ has the meaning
21 given such term by section 3121(a) (determined with-
22 out regard to any dollar limitation contained in such
23 section).

24 “(5) AGGREGATION AND OTHER RULES MADE AP-
25 PLICABLE.—

1 “(A) *AGGREGATION RULES.*—All employers
2 *treated as a single employer under subsection*
3 *(b), (c), (m), or (o) of section 414 shall be treated*
4 *as a single employer for purposes of this section.*

5 “(B) *OTHER RULES.*—Rules similar to the
6 *rules of subsections (c), (d), and (e) of section 52*
7 *shall apply.*

8 “(f) *CREDIT MADE AVAILABLE TO TAX-EXEMPT ELIGI-*
9 *BLE SMALL EMPLOYERS.*—

10 “(1) *IN GENERAL.*—In the case of a tax-exempt
11 *eligible small employer, there shall be treated as a*
12 *credit allowable under subpart C (and not allowable*
13 *under this subpart) the lesser of—*

14 “(A) *the amount of the credit determined*
15 *under this section with respect to such employer,*
16 *or*

17 “(B) *the amount of the payroll taxes of the*
18 *employer during the calendar year in which the*
19 *taxable year begins.*

20 “(2) *TAX-EXEMPT ELIGIBLE SMALL EM-*
21 *PLOYER.*—For purposes of this section, the term ‘tax-
22 *exempt eligible small employer’ means an eligible*
23 *small employer which is any organization described*
24 *in section 501(c) which is exempt from taxation*
25 *under section 501(a).*

1 “(3) *PAYROLL TAXES.*—*For purposes of this sub-*
2 *section—*

3 “(A) *IN GENERAL.*—*The term ‘payroll taxes’*
4 *means—*

5 “(i) *amounts required to be withheld*
6 *from the employees of the tax-exempt eligi-*
7 *ble small employer under section 3401(a),*

8 “(ii) *amounts required to be withheld*
9 *from such employees under section 3101(b),*
10 *and*

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

14 “(B) *SPECIAL RULE.*—*A rule similar to the*
15 *rule of section 24(d)(2)(C) shall apply for pur-*
16 *poses of subparagraph (A).*

17 “(g) *APPLICATION OF SECTION FOR CALENDAR YEARS*
18 *2011, 2012, AND 2013.*—*In the case of any taxable year*
19 *beginning in 2011, 2012, or 2013, the following modifica-*
20 *tions to this section shall apply in determining the amount*
21 *of the credit under subsection (a):*

22 “(1) *NO CREDIT PERIOD REQUIRED.*—*The credit*
23 *shall be determined without regard to whether the tax-*
24 *able year is in a credit period and for purposes of ap-*
25 *plying this section to taxable years beginning after*

1 2013, no credit period shall be treated as beginning
2 with a taxable year beginning before 2014.

3 “(2) *AMOUNT OF CREDIT.*—The amount of the
4 credit determined under subsection (b) shall be deter-
5 mined—

6 “(A) by substituting ‘35 percent (25 percent
7 in the case of a tax-exempt eligible small em-
8 ployer)’ for ‘50 percent (35 percent in the case
9 of a tax-exempt eligible small employer)’,

10 “(B) by reference to an eligible small em-
11 ployer’s nonelective contributions for premiums
12 paid for health insurance coverage (within the
13 meaning of section 9832(b)(1)) of an employee,
14 and

15 “(C) by substituting for the average pre-
16 mium determined under subsection (b)(2) the
17 amount the Secretary of Health and Human
18 Services determines is the average premium for
19 the small group market in the State in which the
20 employer is offering health insurance coverage
21 (or for such area within the State as is specified
22 by the Secretary).

23 “(3) *CONTRIBUTION ARRANGEMENT.*—An ar-
24 rangement shall not fail to meet the requirements of

1 subsection (d)(4) solely because it provides for the of-
2 fering of insurance outside of an Exchange.

3 “(h) *INSURANCE DEFINITIONS.*—Any term used in this
4 section which is also used in the Public Health Service Act
5 or subtitle A of title I of the Patient Protection and Afford-
6 able Care Act shall have the meaning given such term by
7 such Act or subtitle.

8 “(i) *REGULATIONS.*—The Secretary shall prescribe
9 such regulations as may be necessary to carry out the provi-
10 sions of this section, including regulations to prevent the
11 avoidance of the 2-year limit on the credit period through
12 the use of successor entities and the avoidance of the limita-
13 tions under subsection (c) through the use of multiple enti-
14 ties.”.

15 (b) *CREDIT TO BE PART OF GENERAL BUSINESS*
16 *CREDIT.*—Section 38(b) of the Internal Revenue Code of
17 1986 (relating to current year business credit) is amended
18 by striking “plus” at the end of paragraph (34), by striking
19 the period at the end of paragraph (35) and inserting “,
20 plus”, and by inserting after paragraph (35) the following:

21 “(36) the small employer health insurance credit
22 determined under section 45R.”.

23 (c) *CREDIT ALLOWED AGAINST ALTERNATIVE MIN-*
24 *IMUM TAX.*—Section 38(c)(4)(B) of the Internal Revenue
25 Code of 1986 (defining specified credits) is amended by re-

1 *designating clauses (vi), (vii), and (viii) as clauses (vii),*
2 *(viii), and (ix), respectively, and by inserting after clause*
3 *(v) the following new clause:*

4 *“(vi) the credit determined under sec-*
5 *tion 45R.”.*

6 *(d) DISALLOWANCE OF DEDUCTION FOR CERTAIN EX-*
7 *PENSES FOR WHICH CREDIT ALLOWED.—*

8 *(1) IN GENERAL.—Section 280C of the Internal*
9 *Revenue Code of 1986 (relating to disallowance of de-*
10 *duction for certain expenses for which credit allowed),*
11 *as amended by section 1401(b), is amended by adding*
12 *at the end the following new subsection:*

13 *“(h) CREDIT FOR EMPLOYEE HEALTH INSURANCE EX-*
14 *PENSES OF SMALL EMPLOYERS.—No deduction shall be al-*
15 *lowed for that portion of the premiums for qualified health*
16 *plans (as defined in section 1301(a) of the Patient Protec-*
17 *tion and Affordable Care Act), or for health insurance cov-*
18 *erage in the case of taxable years beginning in 2011, 2012,*
19 *or 2013, paid by an employer which is equal to the amount*
20 *of the credit determined under section 45R(a) with respect*
21 *to the premiums.”.*

22 *(2) DEDUCTION FOR EXPIRING CREDITS.—Sec-*
23 *tion 196(c) of such Code is amended by striking*
24 *“and” at the end of paragraph (12), by striking the*
25 *period at the end of paragraph (13) and inserting “,*

1 and”, and by adding at the end the following new
2 paragraph:

3 “(14) the small employer health insurance credit
4 determined under section 45R(a).”.

5 (e) *CLERICAL AMENDMENT.*—The table of sections for
6 subpart D of part IV of subchapter A of chapter 1 of the
7 Internal Revenue Code of 1986 is amended by adding at
8 the end the following:

 “Sec. 45R. Employee health insurance expenses of small employers.”.

9 (f) *EFFECTIVE DATES.*—

10 (1) *IN GENERAL.*—The amendments made by
11 this section shall apply to amounts paid or incurred
12 in taxable years beginning after December 31, 2010.

13 (2) *MINIMUM TAX.*—The amendments made by
14 subsection (c) shall apply to credits determined under
15 section 45R of the Internal Revenue Code of 1986 in
16 taxable years beginning after December 31, 2010, and
17 to carrybacks of such credits.

18 ***Subtitle F—Shared Responsibility***
19 ***for Health Care***

20 ***PART I—INDIVIDUAL RESPONSIBILITY***

21 ***SEC. 1501. REQUIREMENT TO MAINTAIN MINIMUM ESSEN-***
22 ***TIAL COVERAGE.***

23 (a) *FINDINGS.*—Congress makes the following findings:

24 (1) *IN GENERAL.*—The individual responsibility
25 requirement provided for in this section (in this sub-