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IRS Memo Addresses Healthcare Credit for Small Tax-Exempt Employers.

The IRS Tax-Exempt and Government Entities Division has issued a memorandum (TEGE-04-06-4-0015) providing interim guidance to examining agents auditing small tax-exempt employers that may be eligible for the small business healthcare tax credit under section 45R.

The purpose of the interim guidance, which is effective immediately, is to ensure consistency in the application of section 45R, which provides a tax credit to eligible small employers — including tax-exempt organizations — that provide health insurance coverage to their employees. For tax-exempt employers, the credit under section 45R is a refundable credit based on premiums paid. The interim guidance provides that if a tax-exempt employer appears to be eligible for the tax credit, examining agents must inform the employer of its potential eligibility.

To ensure accuracy in verifying eligibility and computation of the credit, the interim guidance provides that agents must obtain technical consultation before proposing allowance, disallowance, or adjustment of the section 45R credit. And according to the guidance, required sequestration reductions include a reduction to the refundable portion of the section 45R credit for small tax-exempt employers. The sequestration reduction rate for the refund portion of this credit is 7.2 percent for refunds processed in the fiscal year ending September 30, 2014.

June 12, 2014

Affected IRM: 4.75.11, 4.75.13

Expiration Date: June 12, 2015

MEMORANDUM FOR
ALL EO EXAMINATIONS MANAGERS
AND
ALL EO EXAMINATIONS REVENUE AGENTS

FROM:
Mary A. Epps
Acting Director, EO Examinations

SUBJECT:
IRC 45R Credit for Small Tax-Exempt Employers

This memorandum provides interim guidance to examining agents when auditing small tax-exempt employers that may be eligible for the Small Business Health Care Tax Credit under section 45R of the Internal Revenue Code (IRC).

The purpose of this memorandum is to ensure consistency in the application of a recently enacted tax law affecting tax-exempt organizations.

IRC 45R was added by the Affordable Care Act (March 23, 2010), Public Law No. 111-148. The law provides a tax credit to eligible small employers, including tax-exempt organizations that provide health insurance coverage to their employees. Definitions and background information can be found in Proposed Regulations sections 1.45R-0 through 1.45R-5 (78 FR 52719; 2013-38 I.R.B 211); Notice 2014-06, Rev. Proc. 2013-35, Notice 2010-82, Notice 2010-44,and Rev. Rul. 2010-13.

For tax-exempt employers, the tax credit under IRC 45R is a refundable credit based on premiums paid. If a tax-exempt employer appears to be eligible for the tax credit, examining agents must inform the employer of its potential eligibility. If the employer wants to claim the tax credit it can file with the examiner Form 990-T, Exempt Organization Business Income Tax Return, and attach Form 8941, Credit for Small Employer Health Insurance Premiums. If Form 990-T has already been filed, the tax-exempt employer must file an amended Form 990-T with Form 8941 attached.

Examining agents can refer tax-exempt employers to the online Estimator in order to allow them to get an estimate of the tax credit. This tool, developed by the Taxpayer Advocate Service, is located online at: http://www.taxpayeradvocate.irs.gov/calculator/SBHCTC.htm#StartCalculator.

Caution: This calculation will only provide an estimate of the credit. Tax-exempt employers and examining agents may not rely on the correctness of this calculation. To determine the exact amount of the Small Business Healthcare Tax Credit, tax-exempt employers must complete the Form 8941 and attach it along with the other appropriate forms and file it together with Form 990-T.

In order to ensure accuracy in verifying eligibility and computation of the credit, agents will not propose allowance, disallowance or adjustment of the tax credit without first obtaining technical consultation. Examining agents must consult with Mandatory Review by submitting an e-mail to the mailbox at *TEGE EO Review Staff.

Include the following information in the e-mail:

- A preliminary number of full-time equivalent employees (FTE) during the tax year
- A preliminary estimate of the average annual wages
- For tax years beginning on or after 2014, whether the health insurance was offered through a Small Business Health Options Program (SHOP) Marketplace.

Mandatory Review will then provide further instructions to the agent on how to proceed and whom to contact. Examining agents will use principal issue code (PIC) 24E for any case where the issue of applicability of the tax credit is raised in an examination.

According to the requirements of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, certain automatic sequestration reductions to credits began March 1, 2013. These required sequestration reductions include a reduction to the refundable portion of the IRC 45R credit for small tax-exempt employers. The sequestration reduction rate for the refund portion of this credit is 7.2% for refunds processed in the fiscal year ending September 30, 2014. This sequestration reduction rate will be applied unless and until a law is enacted that cancels or otherwise impacts the sequester.

This temporary guidance is effective immediately.

The contents of this memorandum (or any permanent guidance developed) will be incorporated into IRMs 4.75.11 and 4.75.13.

Please submit your questions to Mandatory Review via *TEGE EO Review Staff.

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