

# Cohen Smith & Company, P.A.

## NEWSLETTER



**CERTIFIED PUBLIC ACCOUNTANTS**  
*Business and Personal Advisors*  
**133 EAST INDIANA AVENUE**  
**DELAND, FLORIDA 32724-4329**

**Phone: (386) 738-3300**

**Fax: (386) 736-2267**

Interested in knowing more about our firm? Please take a minute to browse our website at [www.cohensmithcpas.com](http://www.cohensmithcpas.com).

### June 2010

#### **In This Issue**

- E-Verify Offers Electronic Information On New Hires
- Timeline Of Tax Changes In Health Care Reform Legislation
- Summary Of Small Business Health Insurance Tax Credit
- Estate Scores Huge Victory In Family Limited Partnership Case
- Tax Calendar

#### **E-Verify Offers Electronic Information On New Hires**



E-Verify is the best and quickest way for employers to determine the employment eligibility of new hires. Its safe, simple, and secure Internet-based system that electronically verifies social

security numbers and employment eligibility information reported on Form I-9. It is voluntary in most states and there is no charge to use it.

If you are an employer or employee and would like more information about the E-Verify Program, Form I-9 and/or E-Verify for federal contractors visit: [www.dhs.gov](http://www.dhs.gov) E-Verify or call 888-464-4218.

### **Timeline Of Tax Changes In Health Care Reform Legislation**

Close to a month ago, Congress passed and the President signed into law legislation that overhauls the U.S. health care system and affects nearly all taxpayers, many employers, and many elements of the health care industry. The massive overhaul contains a host of tax changes, many of which are both complex and novel. To compound the challenge, the tax changes go into effect over a number of years-ten if two retroactively effective tax changes are counted and nine if they are not.

The following **highlights** changes for 2010 and 2011

#### **2010**

##### ***Small employer health insurance credit***

For tax years beginning after December 31, 2009, an eligible small employer (ESE) is entitled to a tax credit for making nonelective contributions to buy health insurance for its employees. An ESE generally is an employer with no more than 25 full-time equivalent employees (FTEs) employed during its tax year, and whose employees have annual full-time equivalent wages that average no more than \$50,000. However, the full amount of the credit is available only to an employer with 10 or fewer FTEs and whose employees have average annual full-time equivalent wages from the employer of less than \$25,000. For additional information, refer to the Summary of Small Business Health Insurance Tax Credit article later in the newsletter.

##### ***Expanded dependent coverage in employer health plans***

Effective on March 30, 2010, the general exclusion for reimbursements for medical care expenses under an employer-provided accident or health plan is extended to any child of an employee who hasn't attained age 27 as of the end of the tax year. (Code Sec. 105(b)) This change also applies to the exclusion for employer-provided coverage under an accident or health plan for injuries or sickness for such a child.

#### **2011**

##### ***W-2 must include cost of employer-provided health insurance***



For tax year beginning after December 31, 2010, an employer must disclose on each employee's annual Form W-2 the value of the employee's health insurance coverage sponsored by the employer. (Code Sec. 6051(a)(14)) (Tax Planning & Practice Guide ¶ 203 04/01/2010)

##### ***Restricted definition of medicine for health plan reimbursements***

The cost of over-the-counter medicines can't be reimbursed with excludible income through a health flexible spending arrangement (FSA), health reimbursement account (HRA), health savings account (HSA), or Archer MSA, unless the medicine is prescribed by a doctor. For HSAs and Archer MSAs, this applies for amounts paid with respect to tax years beginning after December 31, 2010; for health FSAs and HRAs, it applies for expenses incurred with respect to tax years beginning after December 31, 2010. (Code Sec. 106(f), Code Sec. 220(d)(2)(A), and Code Sec. 223(d)(2)(A)) (Tax Planning & Practice Guide ¶ 209 04/01/2010)

### ***Increased tax on nonqualifying HSA and Archer MSA distributions***

For disbursements made during tax years starting after December 31, 2010, the additional tax on distributions from an HSA (Health Savings Account) that are not used for qualified medical expenses is increased from 10% to 20% of the disbursed amount, and the additional tax on distributions from an Archer MSA that are not used for qualified medical expenses is increased from 15% to 20% of the disbursed amount. (Code Sec. 220(f)(4)(A) and Code Sec. 223(f)(4)(A)) (Tax Planning and Practice Guide 209 04/01/2010).



### **Summary Of Small Business Health Insurance Tax Credit**

In a new publication, the Congressional Research Service (CRS) simplifies some of the difficult aspects of calculating the Code Sec. 45R small employer health insurance credit created by the Patient Protection and Affordable Care Act. The credit percentage that can be claimed varies with the number of employees and average wages. Taxpayers who want an idea of the credit percentage available in a particular instance can use one of three tables in the study to get a quick read.

The credit is a general business credit, and can be carried back for one year and carried forward for 20 years. (Code Sec. 38(b), Code Sec. 39(a). The credit is available for tax liability under the alternative minimum tax (Code Sec. 38(c)(4)(B)(vi).

#### ***Year the credit is available***

The credit is initially available for any tax year beginning 2010, 2011, 2012, or 2013. Qualifying health insurance for claiming the credit for this first phase of the credit is health insurance coverage within the meaning of Code Sec. 98329(b)(1). (Code

Sec. 45R(g)(2) This is generally health insurance coverage purchased from an insurance company licensed under state law. For tax years beginning after 2013, the credit is only available to an eligible small employer that purchases health insurance coverage for its employees through a state exchange and is only available for a maximum coverage period of two consecutive tax years beginning with the first year in which the employer or any predecessor first offers one or more qualified plans to its employees through an exchange.

#### ***Calculation of credit amount***

The credit is equal to the lesser of the following two amounts multiplied by an applicable tax credit percentage:

- 1) The amount of contributions the ESE made on behalf of the employees during the tax year for the qualifying health coverage and
- 2) The amount of contributions that the employer would have made during the tax year if each employee had enrolled in coverage with a small business benchmark premium is multiplied by the number of employees enrolled in coverage and then multiplied by the uniform percentage that applies for calculating the level of coverage selected by the employer.

The applicable percentage is 35% for tax years beginning 2009 and before 2014. It is 50% for tax years beginning after 2013.

While the credit directly reduces tax, it also reduces the employer's deduction for health insurance premiums by the credit amount.

Self-employed individuals, including partners and sole proprietors, 2% shareholders of an S Corporation, and 5% owners of the employer (within the meaning of Code Sec. 416(i)(1)(B)(i)) are not treated as employees for purposes of this credit. The credit is not available for a domestic employee of a sole proprietor of a business, and there's a special rule to prevent sole proprietorships from receiving the credit for the owner and their family members. (Code Sec. 45R(e)(1); Committee Report)



### ***Figuring the number of FTEs***

The number of an employer's FTEs is determined by dividing (1) the total hours for which the employer pays wages to employees during the year (but not more than 2,080 hours for any employee) by (2) 2,080. (Code Sec. 45R(d)(2)) The result, if not a whole number, is then rounded to the next lowest whole number.

### ***Calculating average annual wages***

The amount of average annual wages is determined by first dividing (1) the total wages paid by the employer to employees during the employer's tax year by (2) the number of the employer's FTEs for the year. The result is then rounded down to the nearest \$1,000 (if not otherwise a multiple of \$1,000). (Code Sec. 45R(d)(3)(A)) For this purpose, wages means wages as defined for FICA purposes (without regard to the wage base limitation). (Code Sec. 45R(e))

### ***Credit phaseout***

If the number of FTEs exceeds 10 or if average annual wages exceed \$25,000, the amount of the credit is reduced as follows (but not below zero).

- If the number of FTEs exceeds 10, the reduction is determined by multiplying the otherwise applicable credit amount by a fraction having as the numerator the number of FTEs in excess of 10, and having 15 as the denominator.
- If average annual wages exceed \$25,000 the reduction is determined by multiplying the otherwise applicable credit amount by a fraction having as the numerator the amount by which average annual wages exceed \$25,000, and having \$25,000 as the denominator. (Code Sec. 45R(c))

In both cases, the result of the calculation is subtracted from the otherwise applicable credit to determine the credit to which the employer is entitled. In guidance posted on its website, IRS has said that for an employer with both more than 10 FTEs and average annual wages exceeding \$25,000, the reduction is the sum of the amount of the two reductions. This sum may reduce the credit to zero for some employers with fewer than 25 FTEs and average annual wages of less than \$50,000.

### ***Finding the credit percentage under the phaseout rules***



In the following table, the CRS summary of the new small business health insurance tax credit shows how the Code Sec. 45R credit is phased out as the number of FTEs increases from 10 to 25 and as average compensation increases from \$25,000 to \$50,000.

Table Small Business Tax Credit as a Percent (Maximum of 35%) of Employer Contribution to Premiums, For-Profit Firms in 2010-2013 and Nonprofit Firms in 2014+

Average Wage (in 000s)						
Firm Size	Up to \$25	\$30	\$35	\$40	\$45	\$50
Up to 10	35%	28%	21%	14%	7%	0%
11	33%	26%	19%	12%	5%	0%
12	30%	23%	16%	9%	2%	0%
13	28%	21%	14%	7%	0%	0%
14	26%	19%	12%	5%	0%	0%
15	23%	16%	9%	2%	0%	0%
16	21%	14%	7%	0%	0%	0%
17	19%	12%	5%	0%	0%	0%
18	16%	9%	2%	0%	0%	0%
19	14%	7%	0%	0%	0%	0%
20	12%	5%	0%	0%	0%	0%
21	9%	2%	0%	0%	0%	0%
22	7%	0%	0%	0%	0%	0%
23	5%	0%	0%	0%	0%	0%
24	2%	0%	0%	0%	0%	0%
25	0%	0%	0%	0%	0%	0%

Although Code Sec. 45R(d) says an ESE generally is an employer with no more than 25 full-time equivalent employees (FTEs) employed during its tax year, and whose employees have annual full-time equivalent wages that average no more than \$50,000, the chart, which reflects the statutory reduction computation in Code Sec. 45R(c), makes it clear that there's no small business credit if the average is \$50,000.

**Note:** The above table, which uses rounded percentages, is a valuable way to get a quick read on the amount of credit percentage available in a particular instance. However, note that IRS has yet to indicate whether it will employ similar tables in administering the Code Sec. 45R credit.

### Estate Scores Huge Victory In Family Limited Partnership Case

In a rather complicated case (there were 96 paragraphs identifying the fact pattern), the decedent's estate owned a family partnership (FLP) that was created, but not actually funded, before the taxpayer's death. The FLP certificate was filed with the state (Texas), as were the Articles for a Limited Liability Company (LLC) that was to serve as the general partner of the FLP.



The court concluded that under state law, the intent to make the partnership the owner of property was sufficient to treat the partnership as the owner of the property (Keller v. United States, 1204 AFTR 2d 2009-6015). Thus the FLP was treated as validly formed and funded prior to the decedent's death and the intended and documented transfers to family members of decedent were also respected. The Court concluded that the decedent had legitimate nontax reasons to form the FLP (notably, protection of assets from divorces of her children). Ultimately, the assets contributed to the FLP were discounted over 47 percent as a result of the application of the lack of marketability and lack of control discounts.

While the IRS continues to attack Family Limited Partnership discounts, these vehicles can often produce significant tax benefits. If you would like to know more about estate tax planning through use of FLP's, give us a call.

## **Tax Calendar**



### **JUNE 2010**

#### **June 10**

**Employees who work for tips.** If you received \$20 or more in tips during May, report them to your employer. You can use Form 4070.

#### **June 15**

**Individuals.** Make a payment of your 2010 estimated tax if you are not paying your income tax for the year through withholding (or will not pay in enough tax that way). Use Form 1040-ES. This is the second installment date for estimated tax in 2010. For more information, see Publication 505.

**Employers.** For Social Security, Medicare, withheld income tax, and nonpayroll withholding, deposit the tax for payments in May if the monthly rule applies.

**Corporations.** Deposit the second installment of estimated income tax for 2010. A worksheet, Form 1120-W, is available to help you estimate your tax for the year.

### **JULY 2010**

#### **July 12**

**Employees who work for tips.** If you received \$20 or more in tips during June, report them to your employer. You can use Form 4070.

#### **July 15**

**Employers.** For Social Security, Medicare, withheld income tax, and nonpayroll withholding, deposit the tax for payments in June if the monthly rule applies.

### **AUGUST 2010**

#### **August 2**

Social Security, Medicare, and withheld income tax. File Form 941 for the second quarter of 2010. Deposit any undeposited tax. (If your tax liability is less than \$2,500, you can pay it in full with a timely filed return.) If you deposited the tax for the quarter in full and on time, you have until August 10 to file the return.

Federal unemployment tax. Deposit the tax owed through June if more than \$500.

All employers. If you maintain an employee benefit plan, such as a pension, profit-sharing, or stock bonus plan, file Form 5500 or 5500-EZ for calendar year 2009. If you use a fiscal year as your plan year, file the form by the last day of the seventh month after the plan year ends.

#### **Other helpful line services**



[www.IRS.gov](http://www.IRS.gov)  
[www.MyFlorida.com](http://www.MyFlorida.com)  
[www.Volusia.org](http://www.Volusia.org)