

The Small Business Healthcare Tax Credit Webinar *Questions and Answers*

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Presenter: Danny Miller, Connor & Winters, LLP

Determining your ministry's eligibility

Q: You mentioned that ministries must meet three requirements to be eligible. What are they, and do I have to meet all three?

A: Your ministry must meet *all three* of the following to qualify: 1) the employer must have fewer than 25 full-time equivalent employees; 2) the average annual wages of the employer's employees must be less than \$50,000; and 3) the employer must maintain a qualifying arrangement.

Q: We don't include part-time employees in our healthcare plan. Would we still be eligible for the credit?

A: Yes. The employer does not need to provide healthcare coverage to all employees in order to be eligible for the small employer tax credit. The uniform percentage requirement is *not* a uniform coverage requirement.

Q: What if an employee is covered by their spouse's insurance and the employer reimburses them for the premiums they pay? Does that still count as our contribution even though the check goes to the employee and not an insurance carrier? Would we be eligible to claim the credit?

A: No. The employer can only claim the tax credit on premiums paid for health insurance coverage under its "qualifying arrangement." The credit is not available for payment the employer makes to its employees, even if these payments are made to reimburse the employees for healthcare coverage under another healthcare plan.

Q: My church has 8 employees: 2 full-time pastors enrolled in the health plan, 2 full-time employees who have opted out of the health plan, and four part-time employees who are not eligible for the health plan. Both pastors contribute Voluntary Tax (which means the church does not withhold federal income taxes) and both pastors pay SECA taxes, not FICA taxes. Is my church eligible for the small employer tax credit?

A: It depends. Employers must meet three requirements in order to be eligible for the tax credit. From the facts you presented, this church has fewer than 25 employees so it would certainly meet that requirement. However, to be eligible, you also have to figure out the average wages for all FICA employees. In addition, the healthcare coverage provided must be a qualifying arrangement. If you meet all three requirements, then the church would be eligible for the tax credit. The church can claim

the credit against the withholding and FICA taxes of all employees, even those who are not covered under the healthcare plan.

Q: If my church contributes 100% of the pastor's premium and 80% of the typical staff member's premium for the same health plan, are we eligible to apply for the small employer tax credit?

A: It depends. In 2010, you would be able to apply for the credit (deadline is May 15, 2011) because there is a special transition rule that allows employers to make unequal contributions and still qualify – as long as they contribute 50% of the premium for each employee covered by the plan.

However, beginning in the 2011 tax year, you would **not** be eligible with your current arrangement. You would need to comply with the "uniformity rule," which requires you to contribute the same percentage for every covered employee in the same health plan. If you offer multiple plans, you may satisfy this requirement on a plan-by-plan basis.

Q: My church has the following situation: we have two employees – the pastor, who is full-time, and the church secretary, who is part-time. The pastor is covered by the health plan, but has no withholding or FICA. The secretary has withholding and FICA wages, but is not covered under the health plan. Can we claim the tax credit against the FICA and withholding taxes paid for the secretary, who is not covered under the healthcare plan?

A: Yes. The church can claim the credit against an employee's withholding and FICA taxes, even though that employee is not covered under the healthcare plan.

Q: Is there a time limit for this tax credit?

A: Yes. Employers are allowed to claim the credit for 2010 through 2013 and for any two years after that. So basically, employers can claim the credit for a maximum of 6 years.

Calculating Full-time Equivalent Employees (FTEEs) and average wages

Note: GuideStone has created a resource document to help you compute average wages, FTEEs, the amount of the credit, and more. We will notify you once it is available on our Healthcare Reform webpage.

Q: We have more employees that are part time than full time. How do we determine the number of full-time equivalent employees (FTEEs)?

A: The [instructions for Form 8941](#) provide detailed information on how to determine the number of full-time equivalent employees. It also contains worksheets to use in doing the calculations. It should be noted that to calculate the number of FTEEs, you need to include all employees, including: ministers, part-time employees, full-time employees, and those who have terminated during that tax year – *regardless of whether they qualify for or are covered under your health insurance.*

Q: The salary of one of our pastors is greater than \$50,000 and the salary of one of the part-time pastors is also greater than \$50,000. All other employees earn less than \$50,000/yr. How do you determine average wages? By averaging them all?

A: No. If the pastors do not receive FICA wages and instead are taxed under SECA, their wages would *not* be included in the average wage calculation. You just need to count all *FICA* wages to determine average wage. The [instructions for Form 8941](#) provide detailed information on how to determine the number of full-time equivalent employees. It also contains worksheets to use in doing the calculations.

Minister's tax status

Q: Could you please explain the “common law test” used to determine whether ministers are “employees”?

A: The common law test is used to determine whether a minister (or any other worker) is an employee or an independent contractor. There are 20 factors that are considered, but the basic thrust of this test focuses on whether the employer controls the work of the individual. The more control the employer exercises over how, when, where, and by whom work is performed, the more likely the workers are employees, not independent contractors. [IRS Publication 15-A](#) provides information on how to determine whether a worker is a common law employee. However, in general, if the church is reporting its minister's compensation using Form W-2, then it has made the determination that the minister is a common law employee. If the church is reporting its minister's compensation using Form 1099, then the church has made the determination that the minister is self-employed. As a reminder: A self-employed minister is *not* counted for purposes of determining whether the employer has fewer than 25 employees.

Q: How do you determine who is a “minister” for the average income and FTEE computations? Is there a difference for ordained as opposed to non-ordained “ministers”?

A: For purposes of determining whether a church is eligible for the small employer tax credit, the issue is not so much who is a minister but (1) whether the minister's compensation is reported using Form W-2; and (2) whether the minister is a FICA tax employee. If the minister's compensation is reported using Form W-2, the minister is counted for purposes of determining the total number of full-time equivalent employees. If the minister is not a FICA tax employee, his wages do not count for purposes of the average wage calculation. However, whether a minister is ordained or non-ordained could be important with respect to determining whether he is FICA tax employee. You would make that determination about FICA tax employees the same way you would determine if an individual is excluded from the minister category for housing allowance purposes. Only an individual who is engaged in the exercise of ministry would be considered a minister subject to SECA taxes.

Payment arrangements

Q: Our pastor's insurance is paid out of his salary package. Even though it appears the pastor is paying the premium, the church is actually providing funds for him to do so. Do we qualify or not?

A: If it's technically part of the pastor's taxable compensation, then no. It's unlikely you would qualify for the credit. If the pastor has a choice between taxable compensation and non-taxable healthcare benefits, then the employer payment for healthcare coverage would not be eligible for the tax credit.

During his presentation on March 8th, you may have noticed that Danny Miller hesitated when he answered this question. At that time, he indicated that if the church and the pastor engage in true negotiation over a salary package and, as part of that, the church agrees to cover the pastor's health care premiums, then this payment could be eligible for the tax credit. However, the reason that Danny hesitated during the live webinar presentation is this question raises other tax concerns unrelated to the small employer tax credit. There are issues that typically come up when a pastor is able to choose how benefits are provided. Allowing a pastor to choose between receiving cash (in the form of an increase in salary) or receiving non-taxable health care benefits creates issues regarding whether the employer is, in effect, creating some sort of cafeteria plan. There are a number of rules and regulations that apply to cafeteria plans.

For more information on issues that arise when structuring Minister's compensation, you may refer to GuideStone's [Compensation Planning Guide](#). For more on Minister's tax issues, you may see the [Minister's Tax Guide](#).

Q: Our employees have individual health coverage in their names (for example: GuideStone's Personal Plans), but the church pays the premiums – which are not included in the employees' salaries. Does this arrangement still qualify for the tax credit?

A: Yes, this arrangement will qualify for the tax credit as long as the other requirements (including the uniformity requirement) are met.

Determining the amount of the credit

Q: My church pays for family coverage on our health plans. Are those costs eligible for the credit?

A: The credit is available for the premiums you pay under a qualifying arrangement. In other words, it would apply to your family coverage premiums, as long as you meet the other requirements.

Remember that you must also determine whether your expenses are greater or less than what you would pay if your plan premiums were equal to your state's average insurance premiums, as the IRS uses the lesser of these figures to determine your eligible healthcare expenses.

Note: After his presentation on March 8, Danny realized that he may have misunderstood this question and may have been answering a different question than the one that was asked. The answer above is his revision to his answer during the webinar.

Q: My church pays for coverage for retirees. Can we claim those premiums for the tax credit as well?

A: The current guidance is not clear with respect to whether the employer can claim a credit for amounts paid for retirees who are covered under the same plan as current employees. It does not

appear that there is any requirement that the premiums eligible for the tax credit are limited to coverage for current employees and their dependents.

Q: Is there a limit on the amount of credit an employer can receive? What are my eligible health plan premium costs?

A: As mentioned above, there is a limit on how much of your healthcare costs you can claim. The amount of the credit for churches and tax-exempt organizations is 25% of the lesser of the following amounts: your actual costs (what you contribute toward employee health coverage) vs. the amount you would have paid if your plan premiums were equal to the average small group insurance premium for your state (which determine the “maximum costs” allowed for your state). You can find a list of average premiums for each state in the [instructions for IRS Form 8941](#).

It is important for employers to remember to check the average premiums in the state’s small group market when calculating the amount of the tax credit. The following example shows how to determine “maximum costs”:

A small church in Texas provides a health care plan to its employees. The annual premium for employee-only is \$6000 and the annual premium for family coverage is \$13,000. The church pays 50% of the cost of both employee-only coverage (\$3,000/year) and family coverage (\$6,500/year). According to the instructions to Form 8941, the average premiums in the Texas small group market is \$5,140 for employee-only coverage and \$11,972 for family coverage. So the “maximum cost” is 50% of that state average, which is \$2,570 for each employee with employee-only coverage and \$5,986 for each employee with family coverage. In this case, because the “maximum costs” are less than the church’s actual costs, the tax credit is based on the “maximum costs.” So the employer would be entitled to claim a tax credit equal to 25% of \$2,570 (for each employee with employee-only coverage) and 25% of \$5,986 (for each employee with family coverage).

Filing forms and claiming the credit

Q: What information will be required on Form 990-T? Does the Form require the church to provide information it is not used to reporting?

A: The questions at the beginning of Form 990-T are fairly basic informational questions. The only question that might be complicated for some employers is Line C, which asks for information on the book value of the assets of the organization. We believe that it would be appropriate for a church to provide a reasonable estimate of the value of both real property (land and buildings) and personal property (bank accounts, securities, etc.). Even though this information has no bearing on whether an employer is eligible for the small employer tax credit, you still need to provide it on Form 990-T.

Q: Some 990 reporting requires reporting salary information. Is this true for Form 990-T?

A: No. Although there are some questions on Form 990-T relating to salary information, the instructions to Form 990-T indicate that you do not have to fill out that portion of the form relating to

salary information to qualify for the credit. You should review those instructions carefully as they tell you exactly what information you need to include when you file Form 990-T.

Q: How do we fill out the 990-T to claim the tax credit?

A: The 990-T now has detailed instructions on how to fill out the form to claim the credit. It is best to look to the IRS form and instructions to ensure you've completed all required information.

Q: Is there someone we can consult with to help determine if we are eligible for the tax credit? What if we need help completing the forms?

A: A good resource for help in completing Form 8941 is the [instruction document](#) for Form 8941. In addition, the IRS website has a lot of [useful information](#) on the small employer tax credit, including a series of frequently asked questions (FAQs). You may also discuss this with your tax advisor.

Q: Where can I find additional information on the tax credit?

A: You can find additional information on the IRS website:

- For further explanation of the tax credit: search for "[Small Business Health Care Tax Credit](#)" or "Small Business Health Care Tax Credit [Frequently Asked Questions](#)" on the www.irs.gov site.
- For the full text of the IRS's communication: See [Notice 2010-82](#)
- IRS forms:
 - To calculate the Tax Credit: [See Form 8941](#)
 - For instructions on how to fill out Form 8941, including a list of average state insurance premiums: [Instructions for Form 8941](#).
 - To claim the Tax Credit : [Revised Form 990-T](#)
 - For instructions on how to fill out the 990-T: [Instructions for Form 990-T](#)

Q: Where do we send the forms?

A: According to the instructions for Form 990-T, the form should be mailed or delivered to:

Department of the Treasury
Internal Revenue Service Center
Ogden, UT 84201-0027