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Providing strategic counsel on a variety of sophisticated legal matters for 55 years, the attorneys of Mitchell Williams bring together decades of diverse professional experience and extensive relationships to offer clients in Arkansas and across the United States the most comprehensive services and solutions possible.

As progressive leaders in the legal community, we work as advocates and partners to help companies meet the complex business needs required to succeed in today's challenging economic climate. The firm employs 76 attorneys from offices in Arkansas, Texas, and New York. Visit MitchellWilliamsLaw.com to learn more.

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## IRS Issues Guidance On New Small Employer Tax Credit

**The Patient Protection and Affordable Care Act (PPACA)**, signed into law in March 2010, includes a tax credit for small businesses and tax-exempt organizations that provide health coverage to their employees. The IRS explains the tax credit in IRS News Release IR-2010-38 (Apr. 1, 2010)] available at <http://www.irs.gov/newsroom/article/0,,id=220848,00.html>.

**Eligible Employers.** For tax years beginning in 2010, this new tax credit may be taken by employers which meet the following three criteria:

- have fewer than the equivalent of 25 full-time equivalent employees (50 part-time workers are an example of equivalent),
- pay average annual wages of less than \$50,000 for each full-time equivalent employee, and;
- contribute a *uniform\** percentage of at least 50% of the employer's cost of *single coverage premiums\** paid through a "qualifying arrangement". Payroll deferrals into a cafeteria plan are considered employee contributions.

\* *transition relief is anticipated to assist employers meet these "qualifying arrangement" requirements for tax year 2010.*

**Full-time employee equivalent.** For purposes of determining the number of an employer's full-time equivalent employees, the IRS provides this formula:

- count all employees of all businesses under common control – generally a sole proprietor, a partner, a partner owning more-than two-percent of the partnership, a business owner owning more-than five-percent of the business, or a family member of any of the foregoing, are not employees for purposes of this calculation.
- count all hours for which the employees were paid in the tax year limiting each employee to the lesser of (i) actual hours or (ii) 2080 – For example employee A was paid for 1,000 hours and employee B was paid for 2380 hours the calculation would use the actual hours for A and limit the hours for B to the 2080 cap. The calculation would be 1000+2080=3080.

- Divide the total hours by 2080 with the product rounded to the next LOWEST whole number which will result in the number of full time employees equivalent. In the above example if there were an employee C who was paid for 1080 hours then the three employees would be counted as two for purposes of determining the tax credit.

**Average annual wage for a full-time employee equivalent.** The following formula calculates the average annual income for determining employers' eligibility for the tax credit:

- total amount of wages paid to employees for the tax year
- divided by the total number of full-time employees equivalent
- rounded down to the next \$1000

**Premium amounts.** Premium amounts are determined according to the following rules:

- The premiums eligible for counting in determining the credit must be paid by the employer into a "qualifying arrangement" which is one in which the employer pays at least fifty-percent of the premiums for each covered employee.
- The expected 2010 transition relief allows employers to contribute varying percentages for employees and determine the fifty-percent rate on an average.
- Each employee premium amount is determined upon the single rate even if the employee is paying a greater rate such as a family rate and is capped at the average premium for the small group market in the State or area within the State where the employer offers coverage.
- The average premium rate for the small group market will be determined by the HHS and published by the IRS on its website by the end of April.

### **Tax Credit**

The maximum credit available for tax years 2010 through 2013 is equal to thirty-five percent of the amount of eligible premium amounts paid by the employer (twenty-five percent for eligible small tax-exempt employers). Effective January 1, 2014 the respective percentages are increased to fifty-percent and thirty-five percent for tax-exempt employers. The credit gradually phases out for employers with the equivalence of between 10 and 50 full-time employees equivalent and those with annual average wages between \$25,000 and \$50,000.

### **Additional information**

The IRS website offers additional information in the form of frequently asked questions which provides guidance on phase out rules, determining the number of full time employee equivalent, averaging wages, counting hours for which wages are paid, determining eligible premium amounts, and how employers are to claim the credit. Through post card mailings, the IRS will reach out to millions of small business with information on this tax credit.