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Internal Revenue Code Section 45E(e)(4)

Small employer pension plan startup costs

(a) General rule.

For purposes of section 38 , in the case of an eligible employer, the small employer pension plan startup cost credit determined under this section for any taxable year is an amount equal to 50 percent of the qualified startup costs paid or incurred by the taxpayer during the taxable year.

(b) Dollar limitation.

The amount of the credit determined under this section for any taxable year shall not exceed-

(1) for the first credit year and each of the 2 taxable years immediately following the first credit year, the greater of-

(A) \$500, or

(B) the lesser of-

(i) \$250 for each employee of the eligible employer who is not a highly compensated employee (as defined in section 414(q)) and who is eligible to participate in the eligible employer plan maintained by the eligible employer, or

(ii) \$5,000, and

(2) zero for any other taxable year.

(c) Eligible employer.

For purposes of this section -

(1) In general.

The term "eligible employer" has the meaning given such term by section 408(p)(2)(C)(i) .

(2) Requirement for new qualified employer plans.

Such term shall not include an employer if, during the 3-taxable year period immediately preceding the 1st taxable year for which the credit under this section is otherwise allowable for a qualified employer plan of the employer, the employer or any member of any controlled group including the employer (or any predecessor of either) established or maintained a qualified employer plan with respect to which contributions were made, or benefits were accrued, for substantially the same employees as are in the qualified employer plan.

(d) Other definitions.

For purposes of this section -

(1) Qualified startup costs.

(A) In general. The term "qualified startup costs" means any ordinary and necessary expenses of an eligible employer which are paid or incurred in connection with-

- (i) the establishment or administration of an eligible employer plan, or
- (ii) the retirement-related education of employees with respect to such plan.

(B) Plan must have at least 1 participant. Such term shall not include any expense in connection with a plan that does not have at least 1 employee eligible to participate who is not a highly compensated employee.

(2) Eligible employer plan.

The term "eligible employer plan" means a qualified employer plan within the meaning of section 4972(d) .

(3) First credit year.

The term "first credit year" means-

- (A) the taxable year which includes the date that the eligible employer plan to which such costs relate becomes effective with respect to the eligible employer, or
- (B) at the election of the eligible employer, the taxable year preceding the taxable year referred to in subparagraph (A) .

(e) Special rules.

For purposes of this section -

(1) Aggregation rules.

All persons treated as a single employer under subsection (a) or (b) of section 52 , or subsection (m) or (o) of section 414 , shall be treated as one person. All eligible employer plans shall be treated as 1 eligible employer plan.

(2) Disallowance of deduction.

No deduction shall be allowed-

- (A) for that portion of the qualified startup costs paid or incurred for the taxable year which is equal to so much of the portion of the credit determined under subsection (a) as is properly allocable to such costs, and
- (B) for that portion of the employer contributions by the employer for the taxable year which is equal to so much of the credit increase determined under subsection (f) as is properly allocable to such contributions.

(3) Election not to claim credit.

This section shall not apply to a taxpayer for any taxable year if such taxpayer elects to have this section not apply for such taxable year.

 (4) Increased credit for certain small employers.

In the case of an employer which would be an eligible employer under subsection (c) if section 408(p)(2)(C)(i) was applied by substituting "50 employees" for "100 employees", subsection (a) shall be applied by substituting "100 percent" for "50 percent".

(f) Additional credit for employer contributions by certain eligible employers.

(1) In general.

In the case of an eligible employer, the credit allowed for the taxable year under subsection (a) (determined without regard to this subsection) shall be increased by an amount equal to the applicable percentage of employer contributions (other than any elective deferrals (as defined in section 402(g)(3)) by the employer to an eligible employer plan (other than a defined benefit plan (as defined in section 414(j))).

(2) Limitations.

(A) Dollar limitation. The amount determined under paragraph (1) (before the application of subparagraph (B)) with respect to any employee of the employer shall not exceed \$1,000.

(B) Credit phase-in. In the case of any eligible employer which had for the preceding taxable year more than 50 employees, the amount determined under paragraph (1) (without regard to this subparagraph) shall be reduced by an amount equal to the product of-

(i) the amount otherwise so determined under paragraph (1) , multiplied by

(ii) a percentage equal to 2 percentage points for each employee of the employer for the preceding taxable year in excess of 50 employees.

(C) Wage limitation.

(i) In general. No contributions with respect to any employee who receives wages from the employer for the taxable year in excess of \$100,000 may be taken into account for such taxable year under subparagraph (A) .

(ii) Wages. For purposes of the preceding sentence, the term "wages" has the meaning given such term by section 3121(a) .

(iii) Inflation adjustment. In the case of any taxable year beginning in a calendar year after 2023, the \$100,000 amount under clause (i) shall be increased by an amount equal to-

(I) such dollar amount, multiplied by

(II) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting "calendar year 2007" for "calendar year 2016" in subparagraph (A)(ii) thereof.

If any amount as adjusted under this clause is not a multiple of \$5,000, such amount shall be rounded to the next lowest multiple of \$5,000.

(3) Applicable percentage.

For purposes of this section, the applicable percentage for the taxable year during which the eligible employer plan is established with respect to the eligible employer shall be

100 percent, and for taxable years thereafter shall be determined under the following table:

In the case of the following
taxable year beginning after
the taxable year during which
plan is established with respect to the
eligible employer:

The applicable percentage shall be:

1st	100%
2nd	75%
3rd	50%
4th	25%
Any taxable year thereafter	0%

(4) Determination of eligible employer; number of employees.

For purposes of this subsection, whether an employer is an eligible employer and the number of employees of an employer shall be determined under the rules of subsection (c) , except that 45E(c)(2) thereof shall only apply to the taxable year during which the eligible employer plan to which this section applies is established with respect to the eligible employer.