



April 2, 2013

## **Small Business Health Care Tax Credit Frequently Asked Questions—Part II**

The following frequently asked questions (FAQs) may clarify issues about the Small Business Health Care Tax Credit (Tax Credit) contained in the Patient Protection and Affordable Care Act (PPACA). These FAQs—the second installment of questions and answers from the General Board of Pension and Health Benefits (General Board) about the Tax Credit—are based on questions raised by annual conferences and local churches about the practical implications and applicability of the Tax Credit to certain facts and circumstances that are common across the denomination. Each question below is followed by a response from the General Board based on the information published by the Internal Revenue Service (IRS) and the terms of the PPACA.

*This document is not intended as legal or tax advice, but rather as explanatory and illustrative information to help United Methodist local churches understand and benefit from the Tax Credit where possible.*

You can read a general summary of the Tax Credit [here](#) and the first set of FAQs [here](#).

**Q: Is it correct that churches and other eligible entities have until May 15, 2013 to file the Form 990-T for 2012?**

**A:** Yes, businesses, including churches, have until **May 15, 2013** to submit *Form 990-T* (accompanied by *Form 8941*) for the Tax Credit for the 2012 tax year. In subsequent years, *Form 990-T* related to the Tax Credit will be due by **May 15** of the year following the applicable tax year (for example, May 15, 2014 for the 2013 tax year).

**Q: Is the Form 990-T for 2012 available yet?**

**A:** Yes, the IRS has released the final *Form 990-T* for 2012. It can be found online:  
<http://www.irs.gov/pub/irs-pdf/f990t.pdf>.

**Q: In computing the average wages, do you include the housing allowance exemption?**

**A:** No. The clergy housing allowance should not factor into the average wage calculation for employees under the Tax Credit. Even when an employer counts a clergyperson as an employee, clergy wages are *excluded* from the calculation because clergy are self-employed for Social Security tax purposes (i.e., neither they nor their church pay FICA taxes on clergy compensation). Since the only employees who would benefit from the housing allowance are clergypersons and clergy wages are excluded from the average wage calculation under the Tax Credit, housing allowance should not have any effect on the Tax Credit computations.

**Q: Does our church need to withhold money from the pastor's salary to pay his or her Social Security and Medicare taxes (FICA) and federal income taxes in order to qualify for the Tax Credit?**

**A:** No, the church does not have to withhold FICA taxes from clergy pay to claim the Tax Credit related to the cost of health insurance coverage of the clergyperson. In fact, generally a church will not withhold FICA taxes from clergy compensation because—for the purposes of Social Security and Medicare taxes—clergy are considered self-employed and pay self-employment (SECA) taxes. If the church has withheld Medicare taxes or federal income taxes from other employees' wages, or has paid employer-required Medicare taxes for lay employees, the Tax Credit can be applied to those tax payments even with respect to the premiums paid to cover the clergyperson.

However, if the church does not have any other employees for which it withholds income taxes or pays Medicare taxes, then there may be no taxes against which to claim the Tax Credit. In addition, a clergyperson can elect voluntarily to have federal income tax withheld from his or her pay.

**Q: Our church has one appointed pastor and several lay employees. The church pays 100% of the health insurance premium for the pastor, but provides no health insurance for lay employees. Is our church eligible for the Tax Credit if lay employees are not covered?**

**A:** Yes, the church may be eligible for the Tax Credit. The uniform percentage requirement in the Tax Credit is not a uniform coverage requirement. The Tax Credit only requires the percentage of premium paid by the employer be at least 50% and be uniform (with the exception for 2010, when employer contributions could vary as long as they were greater than 50%) for employees enrolled in the health plan—*it does not require that all employees be enrolled.*

**Q: There are one full-time local pastor and four part-time employees at our church. The pastor and one part-time employee are enrolled in the health plan. The church pays the entire premium for the pastor, but the part-time employee pays 100% of her premium. Can the church qualify for the Tax Credit?**

**A:** No. The Tax Credit requires that the employer pay at least 50% of the premium for *each* employee enrolled in (covered by) the plan.

**Q: Our church pays 50% of a clergyperson's compensation (and another church pays the other half of compensation). Does our church count the pastor as full time or part time for purposes of the Tax Credit?**

**A:** An employer can use any reasonable method to count hours in calculating the number of full-time equivalent employees (FTEs). Generally, one rounds down, but one cannot have less than one FTE. So, you may end up reaching a result of one (1) FTE for purposes of the Tax Credit.

**Q: Our church has two part-time lay employees and one full-time pastor. One employee works five hours per week, and the other works nine hours per week. We withhold Medicare taxes from the employees' wages and pay the employer Medicare tax. This totaled \$239.45 for the year. Is our church limited to this amount under the Tax Credit.**

**A:** Yes. If your eligibility for the Tax Credit equals or exceeds \$239.45 (on *Form 8941*), your church would be refunded that amount. Federal income tax withheld from compensation for the lay employees and the pastor would also be eligible for refund under the Tax Credit.

- Q: We have several churches in our conference that form what is referred to as a “charge.” All the churches contribute to one church and that church pays the salary, taxes, health insurance premiums, etc. for the entire charge. Does each church individually have to claim the Tax Credit or, since there is only one *Form 941* for the charge, can the charge claim the Tax Credit and divide the proceeds according to the percentage paid by each church?**
- A:** It seems that the charge conference could treat itself as one employer for the purposes of the Tax Credit. If the charge operates under one employer identification number (EIN) and uses one *Form 941* to remit payroll taxes, it would seem logical that the charge could submit one claim (one *Form 8941* with one *Form 990-T*) for the Tax Credit related to all the employees in the charge (the clergy appointed to each of the churches in the charge and any lay employees employed by the churches in the charge). In a sense, the churches in this charge form a group of closely affiliated employers.

How the charge divides the amount it receives through the Tax Credit is up to the charge, but a pro rata percentage of premiums paid by each church in the charge would seem equitable. The law and regulations do not stipulate how the Tax Credit (the refunded employment taxes) must be used by an eligible employer.

- Q: Our church’s health care plan covers some retirees. Can our church claim the Tax Credit for premiums paid to cover retired clergy and lay employees?**

- A:** The current guidance is not clear with respect to whether an 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 express requirement that the premiums eligible for the Tax Credit are limited to coverage for current employees and their dependents. However, much of the guidance discusses common-law employees (for calculating number of employees and average wages), and excludes business owners, who are not employees. Policy-makers might also argue that the Tax Credit was not intended for retiree coverage, because there was another provision in the PPACA (the Early Retiree Reinsurance Program) that was intended to assist employers in maintaining coverage for retired employees.

### **Additional Information**

More information about the Small Business Health Care Tax Credit was posted previously on the General Board’s **Health Care Reform Web page**. For further information, visit the **IRS website**. A detailed discussion of how to calculate the Tax Credit is included in the instructions to *Form 8941*.

General information about health care reform is available at **[www.healthcare.gov](http://www.healthcare.gov)**.

Please submit any additional questions related to health care reform and The United Methodist Church to **[healthcarereform@gbophb.org](mailto:healthcarereform@gbophb.org)**.

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