

## Checkpoint Contents

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Analysis

Chapter 380,000. General Business Credit

384,300 Small Employer Health Insurance Credit.

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**Tax Desk****¶384,317.1. How employers outside the U.S. can claim the small employer health insurance credit.**

For tax years 2010 through 2013, an eligible small employer's (ESE's, see ¶ 384,302 ) small employer health insurance credit is based on premiums paid for health insurance coverage offered by a health insurance issuer (as described in Code Sec. 9832(b)(1) , see ¶ 384,316 ). Code Sec. 9832(b)(2) requires that an insurer be licensed to engage in the business of insurance in a state and that the insurer is subject to state law regulating insurance. For purposes of Code Sec. 9832(b)(2) and Code Sec. 45R , a "state" is defined in Code Sec. 7701(a)(10) , and means the 50 states plus the District of Columbia. Therefore, an ESE located outside the U.S. (including an employer located in a U.S. territory), which has income effectively connected with the conduct of a U.S. trade or business, can claim the Code Sec. 45R credit only if it pays premiums for an employee's health insurance coverage that is issued in and regulated by one of the 50 states or the District of Columbia. 7.1

7.1

Notice 2010-82, Sec. II. C, 2010-51 IRB 857 .

Similarly, a tax-exempt ESE ( ¶ 384,327 ) located outside the U.S. (including an employer located in a U.S. territory) would also be required to pay premiums for an employee's health insurance coverage that is issued in and regulated by one of the 50 states or the District of Columbia in order to obtain the refundable credit described in Code Sec. 45R ( ¶ 384,326 ). 7.2

7.2

Notice 2010-82, Sec. II. C, 2010-51 IRB 857 .

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