



April 11, 2011

VIA ELECTRONIC MAIL AND FACSIMILE

The Honorable Olympia J. Snowe
Ranking Member
U.S. Senate Committee on Small Business
and Entrepreneurship
428A Russell Senate Office Building
Washington, DC 20510

Re: Health Care Tax Credit

Dear Senator Snowe:

Thank you for your letter, dated March 16, 2011, in which you express concern regarding the ability of small businesses to claim the new health care tax credit under the Patient Protection and Affordable Care Act (ACA). In your letter, you requested that the Office of Advocacy (Advocacy) conduct an analysis regarding how small businesses view the health care tax credit. As described more fully below, many small businesses do not seem fully aware of the health care tax credit or its eligibility requirements. For this reason, Advocacy stands ready to work with you and your office to conduct outreach with small businesses to discuss the health care tax credit.

As you know, Advocacy was established pursuant to P.L. 94-305 to represent the views of small business before Federal agencies and Congress.¹ Advocacy is an independent office within the Small Business Administration (SBA), so the views expressed in this letter do not necessarily reflect the views of the SBA or the Administration. Section 612 of the Regulatory Flexibility Act (RFA) also requires Advocacy to monitor agency compliance with the RFA, as amended by the Small Business Regulatory Enforcement Fairness Act.²

Section 1421 of the ACA creates a new tax provision, section 45R of the Internal Revenue Code, which provides a tax credit to eligible small businesses that pay health insurance premiums for employees. The Internal Revenue Service (IRS) has yet to issue regulations to implement section 45R that would be subject to the RFA. Instead, the IRS has issued guidance and has provided a series of internet guides to help small businesses claim the health care tax credit.

¹ 15 U.S.C. § 634a (1976). http://www.sba.gov/advo/laws/law_sta.html#634a.

² Pub. L. No. 96-354, 94 Stat. 1164 (1981) (codified at 5 U.S.C. §§ 601-612) amended by Subtitle II of the Contract with America Advancement Act, Pub. L. No. 104-121, 110 Stat. 857 (1996). 5 U.S.C. §612(a).

Because 2010 is the first year that small businesses can claim the tax care health credit and it is currently filing season for 2010 tax returns, no hard data is available to perform a research analysis concerning small businesses claiming the credit. Nonetheless, this issue is of concern to Advocacy and we will continue to conduct outreach with small businesses and their representatives regarding the health care tax credit as well as tax issues.

Small businesses frequently report to Advocacy that tax complexity is one of the biggest challenges that they face. In this instance, small businesses have expressed general confusion over the provisions of the ACA. However, Advocacy has heard from some in the small business community who have specifically mentioned the health care tax credit. I have asked my staff, particularly Advocacy's 10 regional advocates, to make sure that this issue is part of their discussions with small businesses.

To the extent that small businesses are even aware of the health care tax credit, there appears to be an absence of knowledge about the specific elements of the credit. For example, a small business that has been in contact with Advocacy mistakenly thought that only businesses with fewer than 10 employees could claim the tax credit. Another small business owner erroneously believed that, to qualify for the credit, the average wages for employees must be less than \$10,000.

Such a lack of knowledge about the health care tax credit seems to point to a need for better education and outreach about the credit to the small business community. To this end, Advocacy stands ready to assist your office in conducting outreach with small businesses. Since relevant data is not yet available, Advocacy recommends coordinating a roundtable with your office for the purpose of hearing first-hand from small businesses about their experiences with the health care tax credit. Roundtables are a valuable tool that Advocacy frequently uses to exchange information with small businesses.

Advocacy looks forward to working with you and your staff on this issue. We will also continue to review appropriate data as it becomes available with an eye toward a possible future study on the scope and effectiveness of this tax credit to small business.

If you have questions about the content of this letter, please do not hesitate to contact me or have your staff contact my office's tax counsel, Dillon Taylor. He is reachable at (202) 401-9787 or Dillon.Taylor@sba.gov.

Sincerely,

/s/

Winslow Sargeant, Ph.D.
Chief Counsel for Advocacy