



IAAPA

International
Association of
Amusement Parks
and Attractions

Headquarters

1448 Duke Street
Alexandria, VA 22314, USA
Phone: +1 703/836-4800
Fax: +1 703/836-6742
Email: iaapa@iaapa.org
www.IAAPA.org

IAAPA Europe

Square de Meeus 38/40
B-1000 Brussels, Belgium
Phone: +32 2-401-6161
Fax: +32 2-401-6868
Email: europe@IAAPA.org

IAAPA Latin America

Ave. Presidente Masaryk 111,
Piso 1
Col. Chapultepec Morales
Mexico, D.F. 11560
Phone: +52 55-3300-5915
Fax: +52 55-3300-5999
Email: latinoamerica@IAAPA.org

2010 EVENTS

Euro Attractions Show

October 6-8
Rome, Italy

IAAPA Attractions Expo

November 15-19
Orlando, Florida, USA

2011 EVENTS

Asian Attractions Expo

21-24 June
Singapore

September 1, 2010

Filed Electronically Via: Notice.comments@irs.counsel.treas.gov

Mireille Khoury, Esq.
Office of Division Counsel/Associate Chief Counsel
(Tax Exempt and Government Entities)
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, D.C. 20044

Re: Notice 2010-44

Dear Ms. Khoury:

The International Association of Amusement Parks and Attractions (“IAAPA”) is the largest international trade association for permanently situated amusement facilities and attractions. IAAPA represents more than 4,100 facility, supplier, and individual members from more than 90 countries. Member facilities include amusement/theme parks, waterparks, attractions, family entertainment centers, arcades, zoos, aquariums, museums, science centers, resorts, and casinos. The association’s members include very large, multi-location facilities as well as small, single-site, family-owned operations.

Many amusement and attractions facilities are seasonal businesses, with limited operating days each year. As a result, while individual businesses may maintain some full-time, year-round employees, their seasonal workforces are often much larger in comparison. Although seasonal workers are employed for a relatively small portion of time, it is incontrovertible that they are essential for the smooth operation of each amusement or attraction.

Many of the seasonal workers employed by IAAPA’s members are young people and students who often have health care coverage through their parents’ or schools’ health insurance plans. In addition, some seasonal workers also hold another job that may already provide health insurance – e.g., teachers who work in summer camps or zoos. It is also true that some seasonal or part-time employees hold multiple seasonal or part-time jobs.

Given the amusement and attractions industry’s heavy reliance on seasonal employees, IAAPA has been actively engaged in ensuring that the interests of its members are taken into account as the numerous provisions of the Patient Protection and Affordable Care Act (“PPACA”) are implemented. IAAPA therefore welcomes the opportunity to comment on Section 45R – Tax Credit for Employee Health Insurance Expenses of Small Employers in Notice 2010-44.

Proposed Part II. Section B
Determining the Employees taken into Account

Section II. B of the Internal Revenue Service's proposal provides that:

“Partners in a business and certain owners are not taken into account as employees for purposes of section 45R. . . . Family members of these owners and partners are also not taken into account as employees. For purposes of section 45R, a family member is defined as a child (or descendent of a child); a sibling or step-sibling; a parent (or ancestor of a parent); a step-parent; a niece or nephew; an aunt or uncle; or a son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law or sister-in-law. Finally, any other member of the household of these owners and partners who qualifies as a dependent under section 152(d)(2)(H) is not taken into account as an employee for purposes of section 45R.”

IAAPA endorses the principle articulated in the Service's proposal that family members should not be taken into account when counting “employees” for purposes of determining eligibility for the small business tax credit. As noted above, many of IAAPA's members are small businesses which are often family-owned and operated. In many important respects, family members are not analogous to non-family related employees. Decisions on work arrangements and compensation are often derived from factors that vary from the factors and decisions made in hiring and compensating non-related employees. The Service is correct in recognizing this distinction and exempting family members from the employer's full-time employee (FTE) count, average wages, and health insurance premiums paid.

IAAPA also supports the principle that seasonal workers who work fewer than 120 days should be excluded from the determination of the number of employees that must be taken into account for purposes of the small business credit. Including seasonal workers in a small business' FTE count would distort the employment picture for seasonal businesses and perhaps create a harmful precedent for implementation of other provisions of the PPACA.

Seasonal workers are never considered permanent by the businesses that hire them because they are retained cyclically on a seasonal basis to meet temporary needs. Many amusement parks and attractions, for example, are either open only part of the year or, if they are open the entire year, see large seasonal fluctuations in their staffing needs around peak seasons in the same manner as retailers. Seasonal workers are critical to amusement parks and attractions for short and predictable periods of time, yet they are not part of a park's core permanent work force. Excluding these workers from a small business' FTE count is the correct course of action.

IAAPA appreciates the opportunity to comment on Section 45R – Tax Credit for Employee Health Insurance Expenses of Small Employers in Notice 2010-44. If you have any questions or need more information, please contact me.

Sincerely,



Randy Davis
Senior Vice President
Government Relations & Safety Services