



## IRC § 162(M): REDLINE SHOWING CHANGES MADE BY THE 2017 TAX REFORM ACT

### EFFECTIVE DATE.—

- (1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 2017.
- (2) EXCEPTION FOR BINDING CONTRACTS.—The amendments made by this section shall not apply to remuneration which is pursuant to a written binding contract which was in effect on November 2, 2017, and which was not modified in any material respect on or after such date.

### (m) Certain excessive employee remuneration.

#### (1) In general.

In the case of any publicly held corporation, no deduction shall be allowed under this chapter for applicable employee remuneration with respect to any covered employee to the extent that the amount of such remuneration for the taxable year with respect to such employee exceeds \$1,000,000.

#### (2) Publicly held corporation.

For purposes of this subsection, the term “publicly held corporation” means any corporation ~~issuing any class of common equity securities required to be registered under section 12 of the Securities Exchange Act of 1934 which is an issuer (as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c) —~~

~~(A) the securities of which are required to be registered under section 12 of such Act (15 U.S.C. 78I), or~~

~~(B) that is required to file reports under section 15(d) of such Act (15 U.S.C. 78o(d)).~~

**(3) Covered employee.**

For purposes of this subsection, the term “covered employee” means any employee of the taxpayer if—

- (A) ~~as of the close of the taxable year, such employee is the chief executive officer of the taxpayer or~~ such employee is the principal executive officer or principal financial officer of the taxpayer at any time during the taxable year, or was an individual acting in such a capacity, ~~or~~
- (B) the total compensation of such employee for the taxable year is required to be reported to shareholders under the Securities Exchange Act of 1934 by reason of such employee being among the ~~4-3~~ 4-3 highest compensated officers for the taxable year (other than ~~the chief executive officer~~ any individual described in subparagraph (A)), ~~or~~
- ~~(C) was a covered employee of the taxpayer (or any predecessor) for any preceding taxable year beginning after December 31, 2016.~~

Such term shall include any employee who would be described in subparagraph (B) if the reporting described in such subparagraph were required as so described.

**(4) Applicable employee remuneration.**

For purposes of this subsection—

- (A) In general. Except as otherwise provided in this paragraph, the term “applicable employee remuneration” means, with respect to any covered employee for any taxable year, the aggregate amount allowable as a deduction under this chapter for such taxable year (determined without regard to this subsection) for remuneration for services performed by such employee (whether or not during the taxable year).
- ~~(B) Exception for remuneration payable on commission basis. The term “applicable employee remuneration” shall not include any remuneration payable on a commission basis solely on account of income generated directly by the individual performance of the individual to whom such remuneration is payable.~~
- ~~(C) Other performance-based compensation. The term “applicable employee remuneration” shall not include any remuneration payable solely on account of the attainment of one or more performance goals, but only if—~~

- ~~(i) — the performance goals are determined by a compensation committee of the board of directors of the taxpayer which is comprised solely of 2 or more outside directors;~~
- ~~(ii) — the material terms under which the remuneration is to be paid, including the performance goals, are disclosed to shareholders and approved by a majority of the vote in a separate shareholder vote before the payment of such remuneration; and~~
- ~~(iii) — before any payment of such remuneration, the compensation committee referred to in clause (i) certifies that the performance goals and any other material terms were in fact satisfied.~~

~~(DB)~~ Exception for existing binding contracts. The term “applicable employee remuneration” shall not include any remuneration payable under a written binding contract which was in effect on February 17, 1993, and which was not modified thereafter in any material respect before such remuneration is paid.

~~(EC)~~ Remuneration. For purposes of this paragraph, the term “remuneration” includes any remuneration (including benefits) in any medium other than cash, but shall not include—

- (i) any payment referred to in so much of section 3121(a)(5) as precedes subparagraph (E) thereof, and
- (ii) any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from gross income under this chapter.

For purposes of clause (i), section 3121(a)(5) shall be applied without regard to section 3121(v)(1).

~~(DF)~~ Coordination with disallowed golden parachute payments. The dollar limitation contained in paragraph (1) shall be reduced (but not below zero) by the amount (if any) which would have been included in the applicable employee remuneration of the covered employee for the taxable year but for being disallowed under section 280G .

~~(GE)~~ Coordination with excise tax on specified stock compensation. The dollar limitation contained in paragraph (1) with respect to any covered employee shall be reduced (but not below zero) by the amount of any payment (with respect to such employee) of the tax imposed by section 4985 directly or indirectly by the expatriated corporation (as defined in such section ) or by any member of the

expanded affiliated group (as defined in such section) which includes such corporation.

(F) Special rule for remuneration paid to beneficiaries, etc. – Remuneration shall not fail to be applicable employee remuneration merely because it is includible in the income of, or paid to, a person other than the covered employee, including after the death of the covered employee.

**(5) Special rule for application to employers participating in the troubled assets relief program.**

(A) In general. In the case of an applicable employer, no deduction shall be allowed under this chapter—

(i) in the case of executive remuneration for any applicable taxable year which is attributable to services performed by a covered executive during such applicable taxable year, to the extent that the amount of such remuneration exceeds \$500,000, or

(ii) in the case of deferred deduction executive remuneration for any taxable year for services performed during any applicable taxable year by a covered executive, to the extent that the amount of such remuneration exceeds \$500,000 reduced (but not below zero) by the sum of—

(I) the executive remuneration for such applicable taxable year, plus

(II) the portion of the deferred deduction executive remuneration for such services which was taken into account under this clause in a preceding taxable year.

(B) Applicable employer. For purposes of this paragraph—

(i) In general. Except as provided in clause (ii), the term “applicable employer” means any employer from whom 1 or more troubled assets are acquired under a program established by the Secretary under section 101(a) of the Emergency Economic Stabilization Act of 2008 if the aggregate amount of the assets so acquired for all taxable years exceeds \$300,000,000.

(ii) Disregard of certain assets sold through direct purchase. If the only sales of troubled assets by an employer under the program described in clause (i) are through 1 or more direct purchases (within the meaning of section 113(c) of the Emergency Economic Stabilization Act of 2008), such assets

shall not be taken into account under clause (i) in determining whether the employer is an applicable employer for purposes of this paragraph.

- (iii) Aggregation rules. Two or more persons who are treated as a single employer under subsection (b) or (c) of section 414 shall be treated as a single employer, except that in applying section 1563(a) for purposes of either such subsection, paragraphs (2) and (3) thereof shall be disregarded.
- (C) Applicable taxable year. For purposes of this paragraph, the term “applicable taxable year” means, with respect to any employer—
- (i) the first taxable year of the employer—
    - (I) which includes any portion of the period during which the authorities under section 101(a) of the Emergency Economic Stabilization Act of 2008 are in effect (determined under section 120 thereof), and
    - (II) in which the aggregate amount of troubled assets acquired from the employer during the taxable Year pursuant to such authorities (other than assets to which subparagraph (B)(ii) applies), when added to the aggregate amount so acquired for all preceding taxable years, exceeds \$300,000,000, and
  - (ii) any subsequent taxable year which includes any portion of such period.
- (D) Covered executive. For purposes of this paragraph—
- (i) In general. The term “covered executive” means, with respect to any applicable taxable year, any employee—
    - (I) who, at any time during the portion of the taxable year during which the authorities under section 101(a) of the Emergency Economic Stabilization Act of 2008 are in effect (determined under section 120 thereof), is the chief executive officer of the applicable employer or the chief financial officer of the applicable employer, or an individual acting in either such capacity, or
    - (II) who is described in clause (ii).
  - (ii) Highest compensated employees. An employee is described in this clause if the employee is 1 of the 3 highest compensated officers of the applicable

employer for the taxable year (other than an individual described in clause (i)(I)), determined—

- (I) on the basis of the shareholder disclosure rules for compensation under the Securities Exchange Act of 1934 (without regard to whether those rules apply to the employer), and
  - (II) by only taking into account employees employed during the portion of the taxable year described in clause (i)(I).
- (iii) Employee remains covered executive. If an employee is a covered executive with respect to an applicable employer for any applicable taxable year, such employee shall be treated as a covered executive with respect to such employer for all subsequent applicable taxable years and for all subsequent taxable years in which deferred deduction executive remuneration with respect to services performed in all such applicable taxable years would (but for this paragraph) be deductible.
- (E) Executive remuneration. For purposes of this paragraph, the term “executive remuneration” means the applicable employee remuneration of the covered executive, as determined under paragraph (4) without regard to subparagraphs ~~(B), (C), and (D)~~ thereof. Such term shall not include any deferred deduction executive remuneration with respect to services performed in a prior applicable taxable year.
- (F) Deferred deduction executive remuneration. For purposes of this paragraph, the term “deferred deduction executive remuneration” means remuneration which would be executive remuneration for services performed in an applicable taxable year but for the fact that the deduction under this chapter (determined without regard to this paragraph) for such remuneration is allowable in a subsequent taxable year.
- (G) Coordination. Rules similar to the rules of subparagraphs ~~(FD)~~ and ~~(GE)~~ of paragraph (4) shall apply for purposes of this paragraph.
- (H) Regulatory authority. The Secretary may prescribe such guidance, rules, or regulations as are necessary to carry out the purposes of this paragraph and the Emergency Economic Stabilization Act of 2008, including the extent to which this paragraph applies in the case of any acquisition, merger, or reorganization of an applicable employer.

**(6) Special rule for application to certain health insurance providers.**

- (A) In general. No deduction shall be allowed under this chapter—
- (i) in the case of applicable individual remuneration which is for any disqualified taxable year beginning after December 31, 2012, and which is attributable to services performed by an applicable individual during such taxable year, to the extent that the amount of such remuneration exceeds \$500,000, or
  - (ii) in the case of deferred deduction remuneration for any taxable year beginning after December 31, 2012, which is attributable to services performed by an applicable individual during any disqualified taxable year beginning after December 31, 2009, to the extent that the amount of such remuneration exceeds \$500,000 reduced (but not below zero) by the sum of—
    - (I) the applicable individual remuneration for such disqualified taxable year, plus
    - (II) the portion of the deferred deduction remuneration for such services which was taken into account under this clause in a preceding taxable year (or which would have been taken into account under this clause in a preceding taxable year if this clause were applied by substituting “December 31, 2009” for “December 31, 2012” in the matter preceding subclause (I)).
- (B) Disqualified taxable year. For purposes of this paragraph, the term “disqualified taxable year” means, with respect to any employer, any taxable year for which such employer is a covered health insurance provider.
- (C) Covered health insurance provider. For purposes of this paragraph—
- (i) In general. The term “covered health insurance provider” means—
    - (I) with respect to taxable years beginning after December 31, 2009, and before January 1, 2013, any employer which is a health insurance issuer (as defined in section 9832(b)(2)) and which receives premiums from providing health insurance coverage (as defined in section 9832(b)(1)), and
    - (II) with respect to taxable years beginning after December 31, 2012, any employer which is a health insurance issuer (as defined in

section 9832(b)(2)) and with respect to which not less than 25 percent of the gross premiums received from providing health insurance coverage (as defined in section 9832(b)(1)) is from minimum essential coverage (as defined in section 5000A(f)).

(ii) Aggregation rules. Two or more persons who are treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as a single employer, except that in applying section 1563(a) for purposes of any such subsection, paragraphs (2) and (3) thereof shall be disregarded.

(D) Applicable individual remuneration. For purposes of this paragraph, the term “applicable individual remuneration” means, with respect to any applicable individual for any disqualified taxable year, the aggregate amount allowable as a deduction under this chapter for such taxable year (determined without regard to this subsection) for remuneration (as defined in paragraph (4) without regard to subparagraphs (B), ~~(C), and (D)~~) thereof for services performed by such individual (whether or not during the taxable year). Such term shall not include any deferred deduction remuneration with respect to services performed during the disqualified taxable year.

(E) Deferred deduction remuneration. For purposes of this paragraph, the term “deferred deduction remuneration” means remuneration which would be applicable individual remuneration for services performed in a disqualified taxable year but for the fact that the deduction under this chapter (determined without regard to this paragraph) for such remuneration is allowable in a subsequent taxable year.

(F) Applicable individual. For purposes of this paragraph, the term “applicable individual” means, with respect to any covered health insurance provider for any disqualified taxable year, any individual—

(i) who is an officer, director, or employee in such taxable year, or

(ii) who provides services for or on behalf of such covered health insurance provider during such taxable year.

(G) Coordination. Rules similar to the rules of subparagraphs ~~(FD)~~ and ~~(GE)~~ of paragraph (4) shall apply for purposes of this paragraph.

(H) Regulatory authority. The Secretary may prescribe such guidance, rules, or regulations as are necessary to carry out the purposes of this paragraph.