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to Application of Proposed Rulemaking Regarding Employee Renumeration

Under section 162(m) as amended by the TCJA, the definition of "covered employee" was broadened to include the PEO and PFO at any time during the year (not just the last day of the year), and the three other most highly compensated officers, for a ...

Aug. 03, 2020



In August of 2018, the Department of the Treasury and the Internal Revenue Service (IRS) issued guidance, in the form of a Notice, on the application of section 162(m) as revised by the Tax Cuts and Jobs Act (TCJA) regarding certain employee remuneration in excess of \$1,000,000.

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The compensation of the PFO was not subject to the section 162(m) limitation. Qualified performance-based and commission-based compensation were exempt from the \$1 million limit. In addition, the term “publicly held corporation” referred to an entity with publicly traded equity.

Under section 162(m) as amended by the TCJA, the definition of “covered employee” was broadened to include the PEO and PFO at any time during the year (not just the last day of the year), and the three other most highly compensated officers, for a minimum of five covered employees. The TCJA added section 162(m)(3)(C) which mandates that individuals who are covered employees of the employer or any predecessor employer in any tax year beginning after December 31, 2016 are covered employees in all future years (including in retirement and after death). The TCJA also repealed the exceptions for qualified performance-based and commission-based compensation.

The AICPA has provided recommendations in the following areas related to the proposed regulations:

- I. Effective Date / Applicability Date: Compensation Paid by a Partnership to a Covered Employee
- II. New Publicly Held Corporation / Continuation of Initial Public Offering Exception
- II. Covered Employee: Definition of Executive Officer
- V. Affiliated Group
- V. Predecessor Corporation: Asset Acquisition
- VI. Grandfathering Rules: Material Modifications – Investment Options

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