

**TITLE 26 - INTERNAL REVENUE CODE****Subtitle A - Income Taxes****CHAPTER 1 - NORMAL TAXES AND SURTAXES****Subchapter B - Computation of Taxable Income****PART IX - ITEMS NOT DEDUCTIBLE****§ 280G. Golden parachute payments****(a) General rule**

No deduction shall be allowed under this chapter for any excess parachute payment.

**(b) Excess parachute payment**

For purposes of this section—

**(1) In general**

The term “excess parachute payment” means an amount equal to the excess of any parachute payment over the portion of the base amount allocated to such payment.

**(2) Parachute payment defined****(A) In general**

The term “parachute payment” means any payment in the nature of compensation to (or for the benefit of) a disqualified individual if—

**(i) such payment is contingent on a change—**

**(I)** in the ownership or effective control of the corporation, or

**(II)** in the ownership of a substantial portion of the assets of the corporation, and

**(ii) the aggregate present value of the payments in the nature of compensation to (or for the benefit of) such individual which are contingent on such change equals or exceeds an amount equal to 3 times the base amount.**

For purposes of clause (ii), payments not treated as parachute payments under paragraph (4)(A), (5), or (6) shall not be taken into account.

**(B) Agreements**

The term “parachute payment” shall also include any payment in the nature of compensation to (or for the benefit of) a disqualified individual if such payment is made pursuant to an agreement which violates any generally enforced securities laws or regulations. In any proceeding involving the issue of whether any payment made to a disqualified individual is a parachute payment on account of a violation of any generally enforced securities laws or regulations, the burden of proof with respect to establishing the occurrence of a violation of such a law or regulation shall be upon the Secretary.

**(C) Treatment of certain agreements entered into within 1 year before change of ownership**

For purposes of subparagraph (A)(i), any payment pursuant to—

**(i) an agreement entered into within 1 year before the change described in subparagraph (A)(i), or****(ii) an amendment made within such 1-year period of a previous agreement,**

shall be presumed to be contingent on such change unless the contrary is established by clear and convincing evidence.

**(3) Base amount****(A) In general**

The term “base amount” means the individual’s annualized includible compensation for the base period.

**(B) Allocation**

The portion of the base amount allocated to any parachute payment shall be an amount which bears the same ratio to the base amount as—

- (i) the present value of such payment, bears to
- (ii) the aggregate present value of all such payments.

**(4) Treatment of amounts which taxpayer establishes as reasonable compensation**

In the case of any payment described in paragraph (2)(A)—

**(A)** the amount treated as a parachute payment shall not include the portion of such payment which the taxpayer establishes by clear and convincing evidence is reasonable compensation for personal services to be rendered on or after the date of the change described in paragraph (2)(A)(i), and

**(B)** the amount treated as an excess parachute payment shall be reduced by the portion of such payment which the taxpayer establishes by clear and convincing evidence is reasonable compensation for personal services actually rendered before the date of the change described in paragraph (2)(A)(i).

For purposes of subparagraph (B), reasonable compensation for services actually rendered before the date of the change described in paragraph (2)(A)(i) shall be first offset against the base amount.

**(5) Exemption for small business corporations, etc.**

**(A) In general**

Notwithstanding paragraph (2), the term “parachute payment” does not include—

- (i) any payment to a disqualified individual with respect to a corporation which (immediately before the change described in paragraph (2)(A)(i)) was a small business corporation (as defined in section 1361 (b) but without regard to paragraph (1)(C) thereof), and
- (ii) any payment to a disqualified individual with respect to a corporation (other than a corporation described in clause (i)) if—
  - (I)** immediately before the change described in paragraph (2)(A)(i), no stock in such corporation was readily tradeable on an established securities market or otherwise, and
  - (II)** the shareholder approval requirements of subparagraph (B) are met with respect to such payment.

The Secretary may, by regulations, prescribe that the requirements of subclause (I) of clause (ii) are not met where a substantial portion of the assets of any entity consists (directly or indirectly) of stock in such corporation and interests in such other entity are readily tradeable on an established securities market, or otherwise. Stock described in section 1504 (a)(4) shall not be taken into account under clause (ii)(I) if the payment does not adversely affect the shareholder’s redemption and liquidation rights.

**(B) Shareholder approval requirements**

The shareholder approval requirements of this subparagraph are met with respect to any payment if—

- (i) such payment was approved by a vote of the persons who owned, immediately before the change described in paragraph (2)(A)(i), more than 75 percent of the voting power of all outstanding stock of the corporation, and

(ii) there was adequate disclosure to shareholders of all material facts concerning all payments which (but for this paragraph) would be parachute payments with respect to a disqualified individual.

The regulations prescribed under subsection (e) shall include regulations providing for the application of this subparagraph in the case of shareholders which are not individuals (including the treatment of nonvoting interests in an entity which is a shareholder) and where an entity holds a de minimis amount of stock in the corporation.

**(6) Exemption for payments under qualified plans**

Notwithstanding paragraph (2), the term “parachute payment” shall not include any payment to or from—

- (A) a plan described in section 401 (a) which includes a trust exempt from tax under section 501 (a),
- (B) an annuity plan described in section 403 (a),
- (C) a simplified employee pension (as defined in section 408 (k)), or
- (D) a simple retirement account described in section 408 (p).

**(c) Disqualified individuals**

For purposes of this section, the term “disqualified individual” means any individual who is—

- (1) an employee, independent contractor, or other person specified in regulations by the Secretary who performs personal services for any corporation, and
- (2) is an officer, shareholder, or highly-compensated individual.

For purposes of this section, a personal service corporation (or similar entity) shall be treated as an individual. For purposes of paragraph (2), the term “highly-compensated individual” only includes an individual who is (or would be if the individual were an employee) a member of the group consisting of the highest paid 1 percent of the employees of the corporation or, if less, the highest paid 250 employees of the corporation.

**(d) Other definitions and special rules**

For purposes of this section—

**(1) Annualized includible compensation for base period**

The term “annualized includible compensation for the base period” means the average annual compensation which—

- (A) was payable by the corporation with respect to which the change in ownership or control described in paragraph (2)(A) of subsection (b) occurs, and
- (B) was includible in the gross income of the disqualified individual for taxable years in the base period.

**(2) Base period**

The term “base period” means the period consisting of the most recent 5 taxable years ending before the date on which the change in ownership or control described in paragraph (2)(A) of subsection (b) occurs (or such portion of such period during which the disqualified individual performed personal services for the corporation).

**(3) Property transfers**

Any transfer of property—

- (A) shall be treated as a payment, and
- (B) shall be taken into account as its fair market value.

**(4) Present value**

Present value shall be determined by using a discount rate equal to 120 percent of the applicable Federal rate (determined under section 1274 (d)), compounded semiannually.

**(5) Treatment of affiliated groups**

Except as otherwise provided in regulations, all members of the same affiliated group (as defined in section 1504, determined without regard to section 1504 (b)) shall be treated as 1 corporation for purposes of this section. Any person who is an officer of any member of such group shall be treated as an officer of such 1 corporation.

**(e) Special rule for application to employers participating in the Troubled Assets Relief Program**

**(1) In general**

In the case of the severance from employment of a covered executive of an applicable employer during 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 of such Act), this section shall be applied to payments to such executive with the following modifications:

**(A)** Any reference to a disqualified individual (other than in subsection (c)) shall be treated as a reference to a covered executive.

**(B)** Any reference to a change described in subsection (b)(2)(A)(i) shall be treated as a reference to an applicable severance from employment of a covered executive, and any reference to a payment contingent on such a change shall be treated as a reference to any payment made during an applicable taxable year of the employer on account of such applicable severance from employment.

**(C)** Any reference to a corporation shall be treated as a reference to an applicable employer.

**(D)** The provisions of subsections (b)(2)(C), (b)(4), (b)(5), and (d)(5) shall not apply.

**(2) Definitions and special rules**

For purposes of this subsection:

**(A) Definitions**

Any term used in this subsection which is also used in section 162 (m)(5) shall have the meaning given such term by such section.

**(B) Applicable severance from employment**

The term “applicable severance from employment” means any severance from employment of a covered executive—

- (i)** by reason of an involuntary termination of the executive by the employer, or
- (ii)** in connection with any bankruptcy, liquidation, or receivership of the employer.

**(C) Coordination and other rules**

**(i) In general**

If a payment which is treated as a parachute payment by reason of this subsection is also a parachute payment determined without regard to this subsection, this subsection shall not apply to such payment.

**(ii) Regulatory authority**

The Secretary may prescribe such guidance, rules, or regulations as are necessary—

**(I)** to carry out the purposes of this subsection and the Emergency Economic Stabilization Act of 2008, including the extent to which this subsection applies in the case of any acquisition, merger, or reorganization of an applicable employer,

**(II)** to apply this section and section 4999 in cases where one or more payments with respect to any individual are treated as parachute payments by reason of

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this subsection, and other payments with respect to such individual are treated as parachute payments under this section without regard to this subsection, and  
**(III)** to prevent the avoidance of the application of this section through the mischaracterization of a severance from employment as other than an applicable severance from employment.

#### **(f) Regulations**

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section (including regulations for the application of this section in the case of related corporations and in the case of personal service corporations).

(Added Pub. L. 98–369, div. A, title I, § 67(a), July 18, 1984, 98 Stat. 585; amended Pub. L. 99–121, title I, § 102(c)(4), Oct. 11, 1985, 99 Stat. 508; Pub. L. 99–514, title XVIII, § 1804(j), Oct. 22, 1986, 100 Stat. 2807; Pub. L. 100–647, title I, § 1018(d)(6)–(8), Nov. 10, 1988, 102 Stat. 3581; Pub. L. 104–188, title I, § 1421(b)(9)(A), Aug. 20, 1996, 110 Stat. 1798; Pub. L. 110–343, div. A, title III, § 302(b), Oct. 3, 2008, 122 Stat. 3805.)

#### **References in Text**

The Emergency Economic Stabilization Act of 2008, referred to in subsec. (e)(1), (2)(C)(ii)(I), is Pub. L. 110–343, div. A, Oct. 3, 2008, 122 Stat. 3765. Section 101(a) of the Act enacted section 5211 (a) of Title 12, Banks and Banking, and amended section 5315 of Title 5, Government Organization and Employees, and section 301 of Title 31, Money and Finance. Section 120 of the Act is classified to section 5230 of Title 12. For complete classification of this Act to the Code, see Short Title note set out under section 5201 of Title 12 and Tables.

#### **Amendments**

2008—Subsecs. (e), (f). Pub. L. 110–343 added subsec. (e) and redesignated former subsec. (e) as (f).

1996—Subsec. (b)(6)(D). Pub. L. 104–188 added subpar. (D).

1988—Subsec. (b)(5)(A). Pub. L. 100–647, § 1018(d)(6), substituted “section 1361 (b) but without regard to paragraph (1)(C) thereof” for “section 1361 (b)” in cl. (i) and inserted at end “Stock described in section 1504 (a)(4) shall not be taken into account under clause (ii)(I) if the payment does not adversely affect the shareholder’s redemption and liquidation rights.”

Subsec. (b)(5)(B). Pub. L. 100–647, § 1018(d)(7), inserted at end “The regulations prescribed under subsection (e) shall include regulations providing for the application of this subparagraph in the case of shareholders which are not individuals (including the treatment of nonvoting interests in an entity which is a shareholder) and where an entity holds a de minimis amount of stock in the corporation.”

Subsec. (d)(5). Pub. L. 100–647, § 1018(d)(8), substituted “officer of any member” for “officer or any member”.

1986—Subsec. (b)(2)(A). Pub. L. 99–514, § 1804(j)(6), inserted “For purposes of clause (ii), payments not treated as parachute payments under paragraph (4)(A), (5), or (6) shall not be taken into account.”

Subsec. (b)(2)(B). Pub. L. 99–514, § 1804(j)(7), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “The term ‘parachute payment’ shall also include any payment in the nature of compensation to (or for the benefit of) a disqualified individual if such payment is pursuant to an agreement which violates any securities laws or regulations.”

Subsec. (b)(4). Pub. L. 99–514, § 1804(j)(2), substituted “Treatment of amounts which taxpayer establishes as reasonable compensation” for “Excess parachute payments reduced to extent taxpayer establishes reasonable compensation” in heading and amended text generally. Prior to amendment, text read as follows: “In the case of any parachute payment described in paragraph (2)(A), the amount of any excess parachute payment shall be reduced by the portion of such payment which the taxpayer establishes by clear and convincing evidence is reasonable compensation for personal services actually rendered. For purposes of the preceding sentence, reasonable compensation shall be first offset against the base amount.”

Subsec. (b)(5). Pub. L. 99–514, § 1804(j)(1), added par. (5).

Subsec. (b)(6). Pub. L. 99–514, § 1804(j)(3), added par. (6).

Subsec. (c). Pub. L. 99–514, § 1804(j)(5), inserted provision defining “highly-compensated individual”.

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Subsec. (d)(2). Pub. L. 99-514, § 1804(j)(8), substituted “performed personal services for the corporation” for “was an employee of the corporation”.

Subsec. (d)(5). Pub. L. 99-514, § 1804(j)(4), added par. (5).

### **Effective Date of 2008 Amendment**

Pub. L. 110-343, div. A, title III, § 302(c)(2), Oct. 3, 2008, 122 Stat. 3806, provided that: “The amendments made by subsection (b) [amending this section] shall apply to payments with respect to severances occurring during the period during which the authorities under section 101(a) of this Act [enacting section 5211 (a) of Title 12, Banks and Banking, and amending section 5315 of Title 5, Government Organization and Employees, and section 301 of Title 31, Money and Finance] are in effect (determined under section 120 of this Act [12 U.S.C. 5230]).”

### **Effective Date of 1996 Amendment**

Amendment by Pub. L. 104-188 applicable to taxable years beginning after Dec. 31, 1996, see section 1421(e) of Pub. L. 104-188, set out as a note under section 72 of this title.

### **Effective Date of 1988 Amendment**

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

### **Effective Date of 1986 Amendment**

Amendment by Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

### **Effective Date of 1985 Amendment**

Amendment by Pub. L. 99-121 applicable to sales and exchanges after June 30, 1985, in taxable years ending after such date, see section 105(a)(1) of Pub. L. 99-121, set out as a note under section 1274 of this title.

### **Effective Date**

Section 67(e) of Pub. L. 98-369 provided that:

“(1) In general.—The amendments made by this section [enacting this section and section 4999 of this title and amending sections 275 and 3121 of this title] shall apply to payments under agreements entered into or renewed after June 14, 1984, in taxable years ending after such date.

“(2) Special rule for contract amendments.—Any contract entered into before June 15, 1984, which is amended after June 14, 1984, in any significant relevant aspect shall be treated as a contract entered into after June 14, 1984.”

### **Plan Amendments Not Required Until January 1, 1998**

For provisions directing that if any amendments made by subtitle D [§§ 1401-1465] of title I of Pub. L. 104-188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104-188, set out as a note under section 401 of this title.

### **Plan Amendments Not Required Until January 1, 1989**

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101-1147 and 1171-1177] or title XVIII [§§ 1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.