



Tax Update

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Proposed Regulation Would Clarify Exceptions to \$1 Million Deduction Limit Under IRC Section 162(m)

by Ron Kramer, Director of Strategic Tax Planning

On June 23, 2011, the Treasury Department and IRS released a notice of proposed rulemaking (REG-137125-08) concerning the deduction limitation for employee remuneration in excess of \$1 million under Internal Revenue Code (IRC) Section 162(m). The preamble to the proposed regulations states that the proposed regulations are not intended to make substantive changes to the existing regulations under Section 162(m) but are intended to:

- Clarify that qualified performance-based compensation attributable to stock options and stock appreciation rights must specify the maximum number of shares with respect to which options or rights may be granted to each individual employee, and
- Clarify the application of a transition rule for taxpayers that are not publicly held corporations but then become publicly held corporations.

Background. Subject to certain exceptions, IRC Section 162(m) generally provides a deduction limit of \$1 million for compensation paid by a publicly held corporation during any tax year to a covered employee (the principal executive officer or someone acting in that capacity) and the three highest paid officers (other than the principal executive officer or principal financial officer). However, the deduction limit doesn't apply to, among other things, certain other performance-based compensation.

The proposed regulations would apply to tax years ending on or after the date final regulations are issued.

The IRS is currently seeking comments or requests for a public hearing on the proposed regulations.

This advice is not intended or written to be used for, and it cannot be used for, the purpose of avoiding any federal tax penalties that may be imposed, or for promoting, marketing or recommending to another person, any tax related matter.



Ron Kramer, Director of Strategic Tax Planning, has more than 30 years of experience in public accounting, including eight years with a national accounting firm. His focus is in advising on and implementing plans with respect to organizing, reorganizing or restructuring business organizations and structuring business transactions to minimize after-tax results for businesses and high-net-worth individuals.

Contact Ron at 412-697-5356 or rkramer@schneiderdowns.com