

“(A) property placed in service after April 2, 1985, in taxable years ending after such date, and

“(B) property leased after April 2, 1985, in taxable years ending after such date.

“(2) The amendments made by section 4 [amending this section] shall not apply to any property—

“(A) acquired by the taxpayer pursuant to a binding contract in effect on April 1, 1985, and at all times thereafter, but only if the property is placed in service before August 1, 1985, or

“(B) of which the taxpayer is the lessee, but only if the lease is pursuant to a binding contract in effect on April 1, 1985, and at all times thereafter, and only if the taxpayer first uses such property under the lease before August 1, 1985.”

EFFECTIVE DATE

Pub. L. 98-369, div. A, title I, §179(d), July 18, 1984, 98 Stat. 719, provided that:

“(1) IN GENERAL.—

“(A) Except as provided in subparagraph (B), the amendments made by subsections (a) and (c) [enacting this section] shall apply to—

“(i) property placed in service after June 18, 1984, in taxable years ending after such date, and

“(ii) property leased after June 18, 1984, in taxable years ending after such date.

“(B) The amendments made by subsections (a) and (c) shall not apply to any property—

“(i) acquired by the taxpayer pursuant to a binding contract in effect on June 18, 1984, and at all times thereafter (or under construction on such date) but only if the property is placed in service before January 1, 1985 (January 1, 1987, in the case of 15-year real property), or

“(ii) of which the taxpayer is the lessee but only if the lease is pursuant to a binding contract in effect on June 18, 1984, and at all times thereafter and only if the taxpayer first uses such property under the lease before January 1, 1985 (January 1, 1987, in the case of 15-year real property).

For purposes of the preceding sentence, the term ‘15-year real property’ includes 18-year real property.

“(2) COMPLIANCE PROVISIONS.—The amendments made by subsection (b) [amending sections 274, 6653, and 6695 of this title] shall apply to taxable years beginning after December 31, 1984.”

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101-508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101-508, set out as a note under section 45K 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.

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

Provisions relating to inflation adjustment of items in this section for certain years were contained in the following:

2016—Revenue Procedure 2016-23.
2015—Revenue Procedure 2015-19.
2014—Revenue Procedure 2014-21.
2013—Revenue Procedure 2013-21.
2012—Revenue Procedure 2012-23.
2011—Revenue Procedure 2011-21.

2010—Revenue Procedure 2010-18.
2009—Revenue Procedure 2009-24.
2008—Revenue Procedure 2008-22.
2007—Revenue Procedure 2007-30.
2006—Revenue Procedure 2006-18.
2005—Revenue Procedure 2005-13.
2004—Revenue Procedure 2004-20.
2003—Revenue Procedure 2003-75.
2002—Revenue Procedure 2002-14.
2001—Revenue Procedure 2001-19.
2000—Revenue Procedure 2000-18.
1999—Revenue Procedure 99-14.
1998—Revenue Procedures 98-24 and 98-30.
1997—Revenue Procedure 97-20.
1996—Revenue Procedure 96-25.

§ 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 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 non-voting 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”.

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

Pub. L. 98-369, div. A, title I, §67(e), July 18, 1984, 98 Stat. 587, 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.

§ 280H. Limitation on certain amounts paid to employee-owners by personal service corporations electing alternative taxable years

(a) General rule

If—

(1) an election by a personal service corporation under section 444 is in effect for a taxable year, and

(2) such corporation does not meet the minimum distribution requirements of subsection (c) for such taxable year,

then the deduction otherwise allowed under this chapter for applicable amounts paid or incurred by such corporation to employee-owners shall not exceed the maximum deductible amount. The preceding sentence shall not apply for purposes of subchapter G (relating to personal holding companies).

(b) Carryover of nondeductible amounts

If any amount is not allowed as a deduction for a taxable year under subsection (a), such amount shall be treated as paid or incurred in the succeeding taxable year.

(c) Minimum distribution requirement

For purposes of this section—

(1) In general

A personal service corporation meets the minimum distribution requirements of this subsection if the applicable amounts paid or incurred during the deferral period of the taxable year (determined without regard to subsection (b)) equal or exceed the lesser of—

(A) the product of—

(i) the applicable amounts paid during the preceding taxable year, divided by the number of months in such taxable year, multiplied by

(ii) the number of months in the deferral period of the preceding taxable year, or

(B) the applicable percentage of the adjusted taxable income for the deferral period of the taxable year.

(2) Applicable percentage

The term “applicable percentage” means the percentage (not in excess of 95 percent) determined by dividing—

(A) the applicable amounts paid or incurred during the 3 taxable years immediately preceding the taxable year, by

(B) the adjusted taxable income of such corporation for such 3 taxable years.

(d) Maximum deductible amount

For purposes of this section, the term “maximum deductible amount” means the sum of—

(1) the applicable amounts paid during the deferral period, plus

(2) an amount equal to the product of—

(A) the amount determined under paragraph (1), divided by the number of months in the deferral period, multiplied by

(B) the number of months in the nondeferral period.

(e) Disallowance of net operating loss carrybacks

No net operating loss carryback shall be allowed to (or from) any taxable year of a personal

service corporation to which an election under section 444 applies.

(f) Other definitions and special rules

For purposes of this section—

(1) Applicable amount

The term “applicable amount” means any amount paid to an employee-owner which is includible in the gross income of such employee, other than—

(A) any gain from the sale or exchange of property between the owner-employee and the corporation, or

(B) any dividend paid by the corporation.

(2) Employee-owner

The term “employee-owner” has the meaning given such term by section 269A(b)(2) (as modified by section 441(i)(2)).

(3) Nondeferral and deferral periods

(A) Deferral period

The term “deferral period” has the meaning given to such term by section 444(b)(4).

(B) Nondeferral period

The term “nondeferral period” means the portion of the taxable year of the personal service corporation which occurs after the portion of such year constituting the deferral period.

(4) Adjusted taxable income

The term “adjusted taxable income” means taxable income determined without regard to—

(A) any amount paid to an employee-owner which is includible in the gross income of such employee-owner, and

(B) any net operating loss carryover to the extent such carryover is attributable to amounts described in subparagraph (A).

(5) Personal service corporation

The term “personal service corporation” has the meaning given to such term by section 441(i)(2).

(Added Pub. L. 100-203, title X, §10206(c)(1), Dec. 22, 1987, 101 Stat. 1330-401; amended Pub. L. 100-647, title II, §2004(e)(2)(B), (3), (14)(A), (C), Nov. 10, 1988, 102 Stat. 3600, 3602.)

AMENDMENTS

1988—Subsecs. (c)(1)(A)(i), (d)(1). Pub. L. 100-647, §2004(e)(14)(C), substituted “amounts paid” for “amounts paid or incurred”.

Subsec. (f)(2). Pub. L. 100-647, §2004(e)(3), substituted “section 269A(b)(2) (as modified by section 441(i)(2))” for “section 296A(b)(2)”.

Subsec. (f)(4). Pub. L. 100-647, §2004(e)(14)(A), amended par. (4) generally. Prior to amendment, par. (4) read as follows: “The term ‘adjusted taxable income’ means taxable income increased by any amount paid or incurred to an employee-owner which was includible in the gross income of such employee-owner.”

Subsec. (f)(5). Pub. L. 100-647, §2004(e)(2)(B), added par. (5).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100-203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100-647, set out as a note under section 56 of this title.