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Section 162(m) Deadline May Be Approaching

December 2009

In Revenue Ruling 2008-13, the Internal Revenue Service clarified that compensation which would otherwise be deductible under Section 162(m) of the Internal Revenue Code using the "performance-based compensation" exception would not qualify for such exception if the compensation would became payable, regardless of whether the applicable performance goals were satisfied, in the event of the covered employee's involuntary termination (either without "cause" or for "good reason") or retirement.

Prior to this ruling, such involuntary termination and retirement payment provisions were generally thought to satisfy the requirements of the "performance-based compensation" exception. Accordingly, the ruling provides transitional relief (i.e., a grace period) so that it does not apply to plans and arrangements that otherwise satisfy the requirements of the "performance-based compensation" exception and either (i) contain a performance period which begins on or before January 1, 2009, or (ii) were in effect on February 21, 2008.

While most public companies' arrangements would likely have satisfied one of the transitional relief requirements for 2009, it is time to take a look at such arrangements to determine if changes need to made before next year's performance programs are put in place. If amendments are necessary, they should be addressed in a timely fashion to ensure that they are appropriately negotiated with the relevant executives and approved by the compensation committee and/or the board of directors before any deadline passes.

Click here for further information on Revenue Ruling 2008-13.

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