

115TH CONGRESS
1ST SESSION

S. 20

To amend the Internal Revenue Code of 1986 to expand the denial of deduction for certain excessive employee remuneration.

IN THE SENATE OF THE UNITED STATES

JANUARY 3, 2017

Mr. VAN HOLLEN introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to expand the denial of deduction for certain excessive employee remuneration.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “CEO–Employee Pay-
5 check Fairness Act of 2017”.

6 **SEC. 2. EXPANSION OF DENIAL OF DEDUCTION FOR CER-**
7 **TAIN EXCESSIVE EMPLOYEE REMUNERA-**
8 **TION.**

9 (a) EXPANDED APPLICATION OF DEDUCTION DE-
10 NIAL IF PAY FAIRNESS REQUIREMENT NOT MET.—Sec-

1 tion 162(m) of the Internal Revenue Code of 1986 is
 2 amended by adding at the end the following new para-
 3 graph:

4 “(7) SPECIAL RULE IN CASE OF COMPANIES
 5 NOT MEETING PAY FAIRNESS REQUIREMENT.—

6 “(A) IN GENERAL.—In the case of a pub-
 7 licly held corporation which does not meet the
 8 pay fairness requirement of subparagraph (B)
 9 for the taxable year—

10 “(i) no deduction shall be allowed
 11 under this chapter for applicable employee
 12 remuneration with respect to any employee
 13 to the extent that the amount of such re-
 14 muneration for the taxable year with re-
 15 spect to such employee exceeds
 16 \$1,000,000, and

17 “(ii) paragraph (4) shall be applied
 18 without regard to subparagraphs (B), (C),
 19 and (D) thereof.

20 For purposes of the preceding sentence, the
 21 term ‘employee’ includes any officer or director
 22 of the taxpayer and any former officer, director,
 23 or employee of the taxpayer.

1 “(B) PAY FAIRNESS REQUIREMENT.—The
2 pay fairness requirement of this subparagraph
3 is met if—

4 “(i)(I) the average compensation paid
5 by the taxpayer to or for all applicable
6 United States employees for the taxable
7 year, exceeds

8 “(II) the inflation and productivity
9 growth adjusted average of such compensa-
10 tion for the preceding taxable year, and

11 “(ii) the aggregate compensation paid
12 by the employer to or for all applicable
13 United States employees for the taxable
14 year is not less than the aggregate of such
15 compensation for the preceding taxable
16 year.

17 “(C) APPLICABLE UNITED STATES EM-
18 PLOYEE.—For purposes of this paragraph, the
19 term ‘applicable United States employee’
20 means, with respect to any taxable year, any
21 employee—

22 “(i) whose services with respect to the
23 employer are substantially all performed
24 within the United States, and

“(ii) whose compensation from the employer for the taxable year does not exceed the dollar amount in effect under section 414(q)(1)(B)(i) with respect to the calendar year in which such taxable year begins.

“(D) INFLATION AND PRODUCTIVITY GROWTH ADJUSTED AVERAGE.—For purposes of subparagraph (B)(i)(II), the inflation and productivity growth adjusted average of compensation for any taxable year shall be determined by multiplying—

“(i) the average of the compensation paid by the taxpayer to or for all applicable United States employees for the taxable year, by

“(ii) the sum of the cost-of-living adjustment and the productivity adjustment for the taxable year.

“(E) COST-OF-LIVING ADJUSTMENT.—For purposes of subparagraph (D)(ii), the cost-of-living adjustment for any taxable year is the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting

1 ‘the second preceding calendar year’ for ‘cal-
2 endar year 1992’ in subparagraph (B) thereof.

3 “(F) PRODUCTIVITY ADJUSTMENT.—For
4 purposes of subparagraph (D)(ii)—

5 “(i) IN GENERAL.—The productivity
6 adjustment for the taxable year is an
7 amount (expressed as a percentage) equal
8 to the average annual increase in the busi-
9 ness productivity index for the period be-
10 ginning with calendar year 2000 and end-
11 ing with the calendar year preceding the
12 calendar year in which the taxable year be-
13 gins.

14 “(ii) BUSINESS PRODUCTIVITY
15 INDEX.—The term ‘business productivity
16 index’ means the nonfarm business produc-
17 tivity index published by the Bureau of
18 Labor Statistics as adjusted by the Sec-
19 retary to account for depreciation.

20 “(G) COMPENSATION.—For purposes of
21 this subparagraph, the term ‘compensation’
22 means, with respect to any employee, the sum
23 of—

1 “(i) the employee’s wages on which
 2 the tax under section 3101(b) is imposed,
 3 plus

4 “(ii) any amount described in para-
 5 graph (9), (11), (12), or (14) of section
 6 6051(a) with respect to the employee.

7 “(H) AGGREGATION RULES.—Rules simi-
 8 lar to the rules of paragraph (5)(B)(iii) shall
 9 apply for purposes of this paragraph.

10 “(I) REGULATIONS.—The Secretary may
 11 prescribe such regulations as are necessary to
 12 carry out the purposes of this paragraph, in-
 13 cluding adjustments to the pay fairness require-
 14 ments of subparagraph (B)—

15 “(i) to prevent avoidance of this para-
 16 graph through changes in the composition
 17 of the taxpayer’s workforce, and

18 “(ii) to account for significant, non-
 19 tax-motivated changes in the size and com-
 20 position of the taxpayer’s workforce (in-
 21 cluding mergers, spinoffs, or changes in
 22 the occupational composition of a tax-
 23 payer’s workforce).”.

24 (b) MODIFICATION OF DEFINITION OF COVERED EM-
 25 PLOYEES.—

1 (1) IN GENERAL.—Paragraph (3) of section
 2 162(m) of the Internal Revenue Code of 1986 is
 3 amended—

4 (A) in subparagraph (A), by striking “as
 5 of the close of the taxable year, such employee
 6 is the chief executive officer of the taxpayer or
 7 is” and inserting “such employee is the chief
 8 executive officer or the chief financial officer of
 9 the taxpayer at any time during the taxable
 10 year, or was”;

11 (B) in subparagraph (B) by striking
 12 “(other than the chief executive officer)” and
 13 inserting “(other than any individual described
 14 in subparagraph (A))”; and

15 (C) by striking “or” at the end of subpara-
 16 graph (A), by striking the period at the end of
 17 subparagraph (B) and inserting “, or”, and by
 18 adding at the end the following:

19 “(C) was a covered employee of the tax-
 20 payer (or any predecessor) for any preceding
 21 taxable year beginning after December 31,
 22 2014.”.

23 (2) TECHNICAL AMENDMENT.—Section
 24 162(m)(3)(B) of such Code is amended by striking
 25 “4 highest” and inserting “3 highest”.

1 (c) APPLICABLE EMPLOYEE REMUNERATION PAID
 2 TO BENEFICIARIES, ETC.—Paragraph (4) of section
 3 162(m) of the Internal Revenue Code of 1986 is amended
 4 by adding at the end the following new subparagraph:

5 “(H) SPECIAL RULE FOR REMUNERATION
 6 PAID TO BENEFICIARIES, ETC.—Remuneration
 7 shall not fail to be applicable employee remuneration
 8 merely because it is includible in the
 9 income of, or paid to, a person other than the
 10 covered employee, including after the death of
 11 the covered employee.”.

12 (d) EXPANSION OF APPLICABLE EMPLOYER TO IN-
 13 CLUDE NON-LISTED PUBLIC COMPANIES.—Paragraph
 14 (2) of section 162(m) of the Internal Revenue Code of
 15 1986 is amended to read as follows:

16 “(2) PUBLICLY HELD CORPORATION.—For pur-
 17 poses of this subsection, the term ‘publicly held cor-
 18 poration’ means any corporation which is an issuer
 19 (as defined in section 3 of the Securities Exchange
 20 Act of 1934) and which—

21 “(A) has a class of securities registered
 22 under section 12 of such Act, or

23 “(B) is required to file reports under sec-
 24 tion 15(d) of such Act.”.

1 (e) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to taxable years beginning after
3 December 31, 2016.

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