

TaxNewsFlash

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Proposed regulations: Limitation of deduction for certain employee remuneration under section 162(m)

The U.S. Treasury Department and IRS today issued [proposed regulations](#) (REG-118988-22) under section 162(m), which limits the deduction for certain employee remuneration in excess of \$1 million for federal income tax purposes.

The proposed regulations implement the amendments made to section 162(m) by the American Rescue Plan Act of 2021.

The proposed regulations generally are proposed to apply to compensation that is otherwise deductible for tax years beginning after the later of December 31, 2026, or the date the proposed regulations are finalized.

The proposed regulations provide:

- For purposes of determining whether an employee is one of the five highest compensated employees as defined in new section 162(m)(3)(C), the term “employee” means an “employee” as defined in section 3401(c). In general, under section 3401(c) and the corresponding regulations, the term “employee” includes a common law employee and an officer of a corporation.
- A covered employee by reason of section 162(m)(3)(C) includes an individual who is both one of the five highest compensated employees for the current tax year (regardless of whether the individual is employed on the last day of the tax year) and also a covered employee on the basis of being a covered employee for a preceding tax year (as provided in section 162(m)(3)(D)).
- Any employee of any corporation in the affiliated group may be one of the five highest compensated employees of the publicly held corporation regardless of whether the employee is an employee of or performs services for the publicly held corporation, as defined in §1.162-33(c)(1)(i).

Comments on the proposed regulations and requests for a public hearing are due by March 17, 2025.

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