II

114TH CONGRESS
2D SESSION

S. 2546

To amend the Internal Revenue Code of 1986 to require certain plans providing for nonqualified deferred compensation to require repayment of benefits to the employer in the event of extraordinary governmental assistance, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 11, 2016

Mr. WHITEHOUSE (for himself, Mr. BLUMENTHAL, and Mrs. MCCASKILL) 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 require certain plans providing for nonqualified deferred compensation to require repayment of benefits to the employer in the event of extraordinary governmental assistance, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ‘‘No Windfalls for Bailed Out Executives Act’’.

SEC. 2. REQUIRED REPAYMENT OF CERTAIN NONQUALIFIED DEFERRED COMPENSATION IN CASE OF EXTRAORDINARY GOVERNMENTAL ASSISTANCE.

(a) IN GENERAL.—Subsection (a) of section 409A of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

"(5) REQUIRED REPAYMENT IN CASE OF EXTRAORDINARY GOVERNMENTAL ASSISTANCE.—

"(A) IN GENERAL.—The requirements of this paragraph are met if the plan provides that, if any employer maintaining the plan receives extraordinary governmental assistance—

"(i) any compensation deferred under the plan which is attributable to services performed by a designated individual with respect to such employer during the 36-month period ending on the date of the receipt of such assistance shall be forfeited, if not yet distributed by such date, or repaid to the employer, if already distributed by such date, and

"(ii) no further compensation will be deferred under the plan with respect to such designated individuals before the date on which the extraordinary governmental assistance is fully repaid to the Federal Government.

"(B) EXTRAORDINARY GOVERNMENTAL ASSISTANCE.—For purposes of this paragraph, the term 'extraordinary governmental assistance' means any grant, loan, loan guarantee, or other assistance (whether in cash or otherwise) made by the Federal Government to or on behalf of an employer which is intended to prevent the employer from becoming imminently insolvent (within the meaning of section 101(32) of title 11, United States Code) or to cure such insolvency of the employer.

"(C) DESIGNATED INDIVIDUAL.—For purposes of this paragraph, the term 'designated individual' means—

"(i) any key employee (as defined in section 416(i)(1)),

"(ii) any member of the board of directors or other officer, and

"(iii) any other employee having an annual compensation from the employer of more than $1,000,000 in any year during or after the 36-month period ending on the date of the receipt of the extraordinary governmental assistance.

"(D) ADDITIONAL TAX PAYABLE WITH RESPECT TO COMPENSATION DEFERRED OR NOT REPAID IN VIOLATION OF RULES.—

"(i) IN GENERAL.—If compensation is required to be included in gross income under paragraph (1)(A) for a taxable year due to a failure to meet the requirements of this paragraph, then in the case of any compensation which is not repaid to the employer in violation of subparagraph (A)(i) and any compensation which is deferred under the plan in violation of subparagraph (A)(ii), paragraph (1)(B) shall not apply and the tax imposed by this chapter for the taxable year shall be increased by an amount equal to—

"(I) 100 percent of the compensation that was not repaid in violation of subparagraph (A)(i), or 100 percent of the compensation that was deferred in violation of subparagraph (A)(ii) which is attributable to services performed during the taxable year, whichever is applicable, reduced by

"(II) the amount of tax imposed by this chapter with respect to such compensation for the taxable year other than under this subparagraph.

In no event shall the effective rate of tax imposed by this chapter on any such compensation be greater than 100 percent.

"(ii) COORDINATION WITH EMPLOYER WITHHOLDING.—For purposes of applying section 3402(a) to—

"(I) any compensation which is not repaid to the employer in violation of subparagraph (A)(i), and

"(II) any compensation which is deferred under the plan in violation of subparagraph (A)(ii),

which is treated as wages for a taxable year by reason of this paragraph, in lieu of the rate of tax applicable under section 3402(a)(1), tax shall be withheld on such compensation at a rate of 100 percent.".

(b) CONFORMING AMENDMENTS.—

(1) Subclause (I) of section 409A(a)(1)(A)(i) of the Internal Revenue Code of 1986 is amended by striking ''and (4)'' and inserting ''(4), and (5)''.

(2) Clause (i) of section 409A(a)(1)(B) of such Code is amended by striking ''If'' and inserting ''Except as provided in paragraph (5)(D), if''.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to amounts deferred under nonqualified deferred compensation plans (as defined in section 409A(d)(1) of the Internal Revenue Code of 1986) in taxable years beginning after the date of the enactment of this Act.

(2) SPECIAL RULE.—The amendments made by this section shall apply to earnings on deferred compensation only to the extent that such amendments apply to such compensation.

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