

111TH CONGRESS
2D SESSION

S. 2994

To amend the Internal Revenue Code of 1986 to impose an excise tax on excessive 2009 bonuses received from certain major recipients of Federal emergency economic assistance, to limit the deduction allowable for such bonuses, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 4, 2010

Mrs. BOXER (for herself and Mr. WEBB) 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 impose an excise tax on excessive 2009 bonuses received from certain major recipients of Federal emergency economic assistance, to limit the deduction allowable for such bonuses, and for other purposes.

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 “Taxpayer Fairness
5 Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) During the years 2008 and 2009, the Na-
 2 tion’s largest financial firms received extraordinary
 3 and unprecedented assistance from the public.

4 (2) Such assistance was critical to the success
 5 and in many cases the survival of these firms during
 6 the year 2009.

7 (3) High earners at such firms should con-
 8 tribute a portion of any excessive bonuses obtained
 9 for the year 2009 to help the Nation reduce the pub-
 10 lic debt and recover from the recession.

11 **SEC. 3. EXCISE TAXES ON EXCESSIVE 2009 BONUSES RE-**
 12 **CEIVED FROM MAJOR RECIPIENTS OF FED-**
 13 **ERAL EMERGENCY ECONOMIC ASSISTANCE.**

14 (a) IMPOSITION OF TAX.—Chapter 46 of the Internal
 15 Revenue Code of 1986 is amended by adding at the end
 16 the following new section:

17 **“SEC. 4999A. EXCESSIVE 2009 BONUSES RECEIVED FROM**
 18 **MAJOR RECIPIENTS OF FEDERAL EMER-**
 19 **GENCY ECONOMIC ASSISTANCE.**

20 “(a) IMPOSITION OF TAX.—There is hereby imposed
 21 on any person who receives a covered excessive 2009 bonus
 22 a tax equal to 50 percent of the amount of such bonus.

23 “(b) DEFINITION.—For purposes of this section, the
 24 term ‘covered excessive 2009 bonus’ has the meaning
 25 given such term by section 280I(b).

1 “(c) ADMINISTRATIVE PROVISIONS AND SPECIAL
2 RULES.—

3 “(1) WITHHOLDING.—

4 “(A) IN GENERAL.—In the case of any
5 covered excessive 2009 bonus which is treated
6 as wages for purposes of section 3402, the
7 amount otherwise required to be deducted and
8 withheld under such section shall be increased
9 by the amount of the tax imposed by this sec-
10 tion on such bonus.

11 “(B) BONUSES PAID BEFORE ENACT-
12 MENT.—In the case of any covered excessive
13 2009 bonus to which subparagraph (A) applies
14 which is paid before the date of the enactment
15 of this section, no penalty, addition to tax, or
16 interest shall be imposed with respect to any
17 failure to deduct and withhold the tax imposed
18 by this section on such bonus.

19 “(2) TREATMENT OF TAX.—For purposes of
20 subtitle F, any tax imposed by this section shall be
21 treated as a tax imposed by subtitle A.

22 “(3) NOTICE REQUIREMENTS.—The Secretary
23 shall require each major Federal emergency eco-
24 nomic assistance recipient (as defined in section
25 280I(d)(1)) to notify, as soon as practicable after

1 the date of the enactment of this section and at such
2 other times as the Secretary determines appropriate,
3 the Secretary and each covered employee (as defined
4 in section 280I(e)) of the amount of covered exces-
5 sive 2009 bonuses to which this section applies and
6 the amount of tax deducted and withheld on such
7 bonuses.

8 “(4) SECRETARIAL AUTHORITY.—The Secretary
9 may prescribe such regulations, rules, and guidance
10 of general applicability as may be necessary to carry
11 out the provisions of this section, including—

12 “(A) to prescribe the due date and manner
13 of payment of the tax imposed by this section
14 with respect to any covered excessive 2009
15 bonus paid before the date of the enactment of
16 this section, and

17 “(B) to prevent—

18 “(i) the recharacterization of a bonus
19 payment as a payment which is not a
20 bonus payment in order to avoid the pur-
21 poses of this section,

22 “(ii) the treatment as other than an
23 additional 2009 bonus payment of any
24 payment of increased wages or other pay-
25 ments to a covered employee who receives

1 a bonus payment subject to this section in
2 order to reimburse such covered employee
3 for the tax imposed by this section with re-
4 gard to such bonus, or

5 “(iii) the avoidance of the purposes of
6 this section through the use of partner-
7 ships or other pass-thru entities.”.

8 (b) CLERICAL AMENDMENTS.—

9 (1) The heading and table of sections for chap-
10 ter 46 of the Internal Revenue Code of 1986 are
11 amended to read as follows:

“CHAPTER 46—TAXES ON CERTAIN EXCESSIVE REMUNERATION

“Sec. 4999. Golden parachute payments.

“Sec. 4999A. Excessive 2009 bonuses received from major recipients of Federal
emergency economic assistance.”.

12 (2) The item relating to chapter 46 in the table
13 of chapters for subtitle D of such Code is amended
14 to read as follows:

“Chapter 46. Taxes on certain excessive remuneration.”.

15 (c) EFFECTIVE DATE.—The amendments made by
16 this section shall apply to payments of covered excessive
17 2009 bonuses after December 31, 2008, in taxable years
18 ending after such date.

1 **SEC. 4. LIMITATION ON DEDUCTION OF AMOUNTS PAID AS**
2 **EXCESSIVE 2009 BONUSES BY MAJOR RECIPI-**
3 **ENTS OF FEDERAL EMERGENCY ECONOMIC**
4 **ASSISTANCE.**

5 (a) IN GENERAL.—Part IX of subchapter B of chap-
6 ter 1 of the Internal Revenue Code of 1986 is amended
7 by adding at the end the following new section:

8 **“SEC. 280I. EXCESSIVE 2009 BONUSES PAID BY MAJOR RE-**
9 **CIPIENTS OF FEDERAL EMERGENCY ECO-**
10 **NOMIC ASSISTANCE.**

11 “(a) GENERAL RULE.—The deduction allowed under
12 this chapter with respect to the amount of any covered
13 excessive 2009 bonus shall not exceed 50 percent of the
14 amount of such bonus.

15 “(b) COVERED EXCESSIVE 2009 BONUS.—For pur-
16 poses of this section, the term ‘covered excessive 2009
17 bonus’ means any 2009 bonus payment paid during any
18 calendar year to a covered employee by any major Federal
19 emergency economic assistance recipient, to the extent
20 that the aggregate of such 2009 bonus payments (without
21 regard to the date on which such payments are paid) with
22 respect to such employee exceeds the dollar amount of the
23 compensation received by the President under section 102
24 of title 3, United States Code, for calendar year 2009.

25 “(c) 2009 BONUS PAYMENT.—

1 “(1) IN GENERAL.—The term ‘2009 bonus pay-
2 ment’ means any payment which—

3 “(A) is a payment for services rendered,

4 “(B) is in addition to any amount payable
5 to a covered employee for services performed by
6 such covered employee at a regular hourly,
7 daily, weekly, monthly, or similar periodic rate,

8 “(C) in the case of a retention bonus, is
9 paid for continued service during calendar year
10 2009 or 2010, and

11 “(D) in the case of a payment not de-
12 scribed in subparagraph (C), is attributable to
13 services performed by a covered employee dur-
14 ing calendar year 2009 (without regard to the
15 year in which such payment is paid).

16 Such term does not include payments to an em-
17 ployee as commissions, contributions to any qualified
18 retirement plan (as defined in section 4974(c)), wel-
19 fare and fringe benefits, overtime pay, or expense re-
20 imbursements. In the case of a payment which is at-
21 tributable to services performed during multiple cal-
22 endar years, such payment shall be treated as a
23 2009 bonus payment to the extent it is attributable
24 to services performed during calendar year 2009.

1 “(2) DEFERRED DEDUCTION BONUS PAY-
2 MENTS.—

3 “(A) IN GENERAL.—The term ‘2009 bonus
4 payment’ includes payments attributable to
5 services performed in 2009 which are paid in
6 the form of remuneration (within the meaning
7 of section 162(m)(4)(E)) for which the deduc-
8 tion under this chapter (determined without re-
9 gard to this section) for such payment is allow-
10 able in a subsequent taxable year.

11 “(B) TIMING OF DEFERRED DEDUCTION
12 BONUS PAYMENTS.—For purposes of this sec-
13 tion and section 4999A, the amount of any pay-
14 ment described in subparagraph (A) (as deter-
15 mined in the year in which the deduction under
16 this chapter, determined without regard to this
17 section, for such payment would be allowable)
18 shall be treated as having been made in the cal-
19 endar year in which any interest in such
20 amount is granted to a covered employee (with-
21 out regard to the date on which any portion of
22 such interest vests).

23 “(3) RETENTION BONUS.—The term ‘retention
24 bonus’ means any bonus payment (without regard to

1 the date such payment is paid) to a covered em-
 2 ployee which—

3 “(A) is contingent on the completion of a
 4 period of service with a major Federal emer-
 5 gency economic assistance recipient, the comple-
 6 tion of a specific project or other activity for
 7 the major Federal emergency economic assist-
 8 ance recipient, or such other circumstances as
 9 the Secretary may prescribe, and

10 “(B) is not based on the performance of
 11 the covered employee (other than a requirement
 12 that the employee not be separated from em-
 13 ployment for cause).

14 A bonus payment shall not be treated as based on
 15 performance for purposes of subparagraph (B) solely
 16 because the amount of the payment is determined by
 17 reference to a previous bonus payment which was
 18 based on performance.

19 “(d) MAJOR FEDERAL EMERGENCY ECONOMIC AS-
 20 SISTANCE RECIPIENT.—For purposes of this section—

21 “(1) IN GENERAL.—The term ‘major Federal
 22 emergency economic assistance recipient’ means—

23 “(A) any financial institution (within the
 24 meaning of section 3 of the Emergency Eco-
 25 nomic Stabilization Act of 2008) if at any time

1 after December 31, 2007, the Federal Govern-
2 ment acquires—

3 “(i) an equity interest in such person
4 pursuant to a program authorized by the
5 Emergency Economic Stabilization Act of
6 2008 or the third undesignated paragraph
7 of section 13 of the Federal Reserve Act
8 (12 U.S.C. 343), or

9 “(ii) any warrant (or other right) to
10 acquire any equity interest with respect to
11 such person pursuant to any such pro-
12 gram,

13 but only if the total value of the equity interest
14 described in clauses (i) and (ii) in such person
15 is not less than \$5,000,000,000,

16 “(B) the Federal National Mortgage Asso-
17 ciation and the Federal Home Loan Mortgage
18 Corporation, and

19 “(C) any person which is a member of the
20 same affiliated group (as defined in section
21 1504, determined without regard to subsection
22 (b) thereof) as a person described in subpara-
23 graph (A) or (B).

24 “(2) TREATMENT OF CONTROLLED GROUPS.—

25 All persons treated as a single employer under sub-

1 section (a) or (b) of section 52 or subsection (m) or
2 (o) of section 414 shall be treated as a single em-
3 ployer with respect to any covered employee.

4 “(e) COVERED EMPLOYEE.—For purposes of this
5 section, the term ‘covered employee’ means, with respect
6 to any major Federal emergency economic assistance re-
7 cipient—

8 “(1) any employee of such recipient, and

9 “(2) any director of such recipient who is not
10 an employee.

11 In the case of any major Federal emergency economic as-
12 sistance recipient which is a partnership or other unincor-
13 porated trade or business, the term ‘employee’ shall in-
14 clude employees of such recipient within the meaning of
15 section 401(c)(1).

16 “(f) REGULATIONS.—The Secretary may prescribe
17 such regulations, rules, and guidance of general applica-
18 bility as may be necessary to carry out the provisions of
19 this section, including—

20 “(1) to prescribe the due date and manner of
21 reporting and payment of any increase in the tax
22 imposed by this chapter due to the application of
23 this section to any covered excessive 2009 bonus
24 paid before the date of the enactment of this section,
25 and

1 “(2) to prevent—

2 “(A) the recharacterization of a bonus pay-
3 ment as a payment which is not a bonus pay-
4 ment in order to avoid the purposes of this sec-
5 tion, or

6 “(B) the avoidance of the purposes of this
7 section through the use of partnerships or other
8 pass-thru entities.”.

9 (b) CLERICAL AMENDMENT.—The table of sections
10 for part IX of subchapter B of chapter 1 of the Internal
11 Revenue Code of 1986 is amended by adding at the end
12 the following new item:

“Sec. 280I. Excessive 2009 bonuses paid by major recipients of Federal emer-
gency economic assistance.”.

13 (c) CONFORMING AMENDMENTS.—

14 (1) Subparagraph (F) of section 162(m)(4) of
15 the Internal Revenue Code of 1986 is amended—

16 (A) by inserting “AND EXCESSIVE 2009 BO-
17 NUSES” after “PAYMENTS” in the heading,

18 (B) by striking “the amount” and insert-
19 ing “the total amounts”, and

20 (C) by inserting “or 280I” before the pe-
21 riod.

22 (2) Subparagraph (A) of section 3121(v)(2) of
23 such Code is amended by inserting “, to any covered

1 excessive 2009 bonus (as defined in section
2 280I(b)),” after “section 280G(b)”.

3 (d) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to payments of covered excessive
5 2009 bonuses after December 31, 2008, in taxable years
6 ending after such date.

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