



AMERICAN BENEFITS
COUNCIL

February 20, 2008

The Honorable Eric Solomon
Assistant Secretary (Tax Policy)
Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, D. C. 20220

Ms. Linda Stiff
Acting Commissioner
Internal Revenue Service
1111 Constitution Avenue NW
Washington, D. C. 20224

Via e-mail

Re: Internal Revenue Code Section 162(m)

Dear Assistant Secretary Solomon and Acting Commissioner Stiff:

On behalf of the American Benefits Council, I am writing to urge that guidance be issued as soon as possible that addresses our members' concerns with the recent publication of PLR 200800404. The PLR concludes that a compensation arrangement is not a "performance-based plan" within the meaning of Code section 162(m) because the plan provides for payouts upon a company's involuntary termination of its executive or a "good reason" termination by the executive. The publication of the PLR, which is contrary to the position taken in two earlier PLRs that considered the same issues, has an immediate financial and tax accounting impact on many of our member companies. While we understand that a PLR provides legal protection only to the taxpayer who receives it, the positions taken in PLRs are relevant authority for purposes of determining whether a tax return position meets the substantial authority standard and are considered in determining whether there is a "more likely than not" position for financial accounting purposes. The apparent reversal in views by IRS counsel as set forth in the PLR impacts many more public company taxpayers than the single company that requested and received the ruling.

As a result of the publication of PLR 20080404, many of our member companies that have established performance-based arrangements for purposes of Code section 162(m) face an immediate accounting impact. The issue is further complicated by the timing of the PLR because many public companies are in the midst of preparing proxies and compensation disclosures for spring shareholder meetings. In light of the PLR's broad and disruptive impact, we urge the Internal Revenue Service to withdraw the ruling. If the Internal Revenue Service wishes to reconsider the position taken in the earlier private letter rulings, we urge that this reconsideration be made in the context of a regulatory action so that taxpayers and affected parties may be afforded the opportunity for notice and comment and that any change be made on a prospective basis.

Thank you in advance for considering our concerns. We would be happy to meet with you to discuss these issues in more detail. If you have any questions, please call me at 202 289 6700.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Jan Jacobson". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Jan Jacobson
American Benefits Council
Senior Counsel, Retirement Policy