



Executive Compensation Law

ALERT

MARCH 2008

LOEB & LOEB adds Knowledge.

IRS Issues Additional Guidance Regarding Section 162(m) Performance-Based Compensation

In regard to our recent Client Alert "Performance-Based Uncertainty Under IRC Section 162(m)" [<http://www.loeb.com/performancebaseduncertaintyunderircsection162m/>], the Internal Revenue Service has now provided a grandfathering rule, under IRS Revenue Ruling 2008-13. The good news is that under the new grandfathering rule, the Section 162(m) deduction will not be disallowed where (1) the applicable performance period for the compensation begins on or before January 1, 2009, or (2) the compensation is paid per the terms of an employment agreement in effect on February 21, 2008 (but without regard to future renewals or extensions thereof). Although the IRS' new grandfathering rule will need to be taken into consideration in the near future, care should be taken to preserve protection under the February 21, 2008 grandfathering date when amending existing employment contracts this year to bring them into compliance with IRC Section 409A by the December 31, 2008 deadline, as such amendments may impact the right to performance-based compensation (such as a revision of a "good reason" provision to comply with the Section 409A safe harbor).

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