

115TH CONGRESS  
2D SESSION

# H. R. 6976

To amend the Internal Revenue Code of 1986 to deny the deduction for executive compensation unless the employer maintains profit-sharing distributions for employees.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 28, 2018

Mrs. WATSON COLEMAN introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 to deny the deduction for executive compensation unless the employer maintains profit-sharing distributions for employees.

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 “Employee Profit-Shar-  
5 ing Encouragement Act of 2018”.

1 **SEC. 2. DENIAL OF DEDUCTION FOR EXECUTIVE COM-**  
 2 **PENSATION UNLESS EMPLOYER MAINTAINS**  
 3 **PROFIT-SHARING DISTRIBUTIONS.**

4 (a) IN GENERAL.—Section 162 of the Internal Rev-  
 5 enue Code of 1986 is amended by redesignating subsection  
 6 (s) as subsection (t) and by inserting after subsection (r)  
 7 the following new subsection:

8 “(s) EXECUTIVE COMPENSATION PAID BY EMPLOY-  
 9 ERS WHO DO NOT MAINTAIN PROFIT-SHARING DIS-  
 10 TRIBUTIONS.—

11 “(1) IN GENERAL.—In the case of a specified  
 12 employer, no deduction shall be allowed under this  
 13 chapter for applicable employee remuneration with  
 14 respect to any highly compensated individual (within  
 15 the meaning of section 105(h)) for any taxable year  
 16 unless qualified profit-sharing distributions are made  
 17 during such taxable year.

18 “(2) QUALIFIED PROFIT-SHARING DISTRIBUTI-  
 19 ONS.—For purposes of this subsection—

20 “(A) IN GENERAL.—The term ‘qualified  
 21 profit-sharing distributions’ means a cash dis-  
 22 tribution made pursuant to a written plan of  
 23 the employer under which—

24 “(i) employees (including part-time  
 25 employees) who have been employed for at

1           least 1 year as of the date of the distribu-  
2           tion have a right to such distribution, and

3           “(ii) the amount of such distributions  
4           are defined under such plan on the basis of  
5           a measure of the receipts, profit, revenues,  
6           or earnings of such employer.

7           “(B) MINIMUM DISTRIBUTION REQUIRE-  
8           MENTS.—Such term shall not include any dis-  
9           tributions made pursuant to such plan during  
10          the taxable year if the aggregate distributions  
11          made pursuant to such plan during such tax-  
12          able year are less than 5 percent of the employ-  
13          er’s net income for the taxable year as deter-  
14          mined pursuant to the employer’s books and  
15          records prepared in accordance with the em-  
16          ployer’s accounting procedures.

17          “(C) NONDISCRIMINATION.—Such term  
18          shall not include any distributions made pursu-  
19          ant to such plan during the taxable year unless  
20          such plan satisfies requirements similar to the  
21          requirements of section 401(k)(3)(A)(ii) applied  
22          by treating the distributions made pursuant to  
23          the plan as though such distributions were con-  
24          tributions paid over to the trust referred to in  
25          such section.

1           “(D) EXCEPTION IF DISTRIBUTIONS  
2           WOULD JEOPARDIZE THE BUSINESS.—An em-  
3           ployer shall not fail to be treated as making  
4           qualified profit-sharing distributions during the  
5           taxable year to the extent that such employer  
6           establishes to the satisfaction of the Secretary  
7           by clear and convincing evidence that making  
8           such distributions would jeopardize the ability  
9           of the employer to continue as a going concern.

10          “(3) SPECIFIED EMPLOYER.—For purposes of  
11          this subsection—

12                 “(A) IN GENERAL.—The term ‘specified  
13                 employer’ means, with respect to any taxable  
14                 year, any employer which meets the gross re-  
15                 ceipts test of section 448(c) (determined with-  
16                 out regard to paragraph (4) thereof) for such  
17                 taxable year.

18                 “(B) APPLICATION OF GROSS RECEIPTS  
19                 TEST TO INDIVIDUALS, ETC.—For purposes of  
20                 subparagraph (A), in the case of any employer  
21                 which is not a corporation or a partnership, the  
22                 gross receipts test referred to in such subpara-  
23                 graph shall be applied in the same manner as  
24                 if each trade or business of such employer were  
25                 a corporation or partnership.

1           “(4) APPLICABLE EMPLOYEE REMUNERA-  
2           TION.—For purposes of this subsection, the term  
3           ‘applicable employee remuneration’ has the meaning  
4           given such term by subsection (m)(4), determined  
5           without regard to subparagraph (B) thereof.

6           “(5) CONTROLLED GROUPS.—For purposes of  
7           this subsection, all persons treated as a single em-  
8           ployer under subsection (b), (c), (m), or (o) of sec-  
9           tion 414 shall be treated as one employer.

10           “(6) COORDINATION.—Rules similar to the  
11           rules of subparagraphs (D) and (E) of subsection  
12           (m)(4) shall apply for purposes of this subsection.

13           “(7) AUTHORITY TO ADDRESS ABUSE.—The  
14           Secretary shall have the authority to address any  
15           abuses by employers under this subsection, includ-  
16           ing, but not limited to, a reduction in employee com-  
17           pensation or benefits in conjunction with the pay-  
18           ment of qualified profit-sharing distributions.”.

19           (b) EFFECTIVE DATE.—The amendments made by  
20           this section shall apply to taxable years beginning after  
21           the date of the enactment of this Act.

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