

HOUSE No. 3034

By Mr. Marzilli of Arlington, petition of J. James Marzilli, Jr., relative to further regulating income tax deductions for certain executive officers of corporations. Revenue.

The Commonwealth of Massachusetts

In the Year Two Thousand and Seven.

AN ACT TO RESTRICT DEDUCTIONS FOR EXECUTIVE COMPENSATION.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Paragraph (1) of subsection (d) of section 2 of chapter 62 of the
2 General Laws, as most recently amended by sections 3 through 7 of
3 chapter 364 of the acts of 2002, is hereby amended by inserting the
4 following subparagraph:—

5 (O) The deduction by a publicly held corporation for employee
6 remuneration in excess of \$1,000,000 for an employee in any one
7 taxable year provided that:

8 (i) as of the close of the taxable year, the employee is:

9 (a) the chief executive officer of the publicly held corporation;

10 (b) acting in the capacity of the chief executive officer; or

11 (c) among the 4 highest compensated officers for the taxable year;

12 (ii) the publicly held corporation issues a class of common equity
13 securities for which section 12 of the Securities and Exchange Act of
14 1934 requires registration;

15 (iii) the remuneration is not payable on a commission basis solely
16 on account of income generated directly by the individual perfor-
17 mance of the employee to whom the corporation pays the remunera-
18 tion;

19 (iv) the remuneration is not payable solely for attainment of one
20 or more performance goals, but only to the extent that the perfor-
21 mance-based remuneration does not exceed \$ 5,000,000, and only if:

22 (a) a compensation committee of the board of directors of the tax-
23 payer, which is comprised solely of 2 or more outside directors,
24 determines the performance goals;

25 (b) the taxpayer discloses the material terms under which the tax-
26 payer will pay the performance based compensation, and a majority
27 of the shareholders, through a separate shareholders vote, approve
28 the terms before payment of the remuneration; and

29 (c) before any payment of the remuneration, the compensation
30 committee certifies that the employee satisfied the material terms of
31 the performance goal;

32 (v) the corporation does not pay the remuneration under a written
33 binding contract which was effective on or before February 17,
34 1993, and which was not modified thereafter in any material respect
35 before such remuneration is paid;

36 (vi) the dollar amount limitation contained in this subsection shall
37 be reduced (but not below zero) by the amount which would have
38 been included in the applicable employee remuneration for the tax-
39 able year but for being disallowed under section 280G of the Internal
40 Revenue Code;

41 (vii) remuneration includes the aggregate amount allowable as a
42 deduction under the Internal Revenue Code, without regard to
43 section 162(m), for a taxable year for remuneration for services per-
44 formed by an employee (whether or not during the taxable year), in
45 any medium including cash. Remuneration does not include pay-
46 ment referred to in section 3121(a)(5) as precedes subparagraph (E)
47 of the Internal Revenue Code, without regard to section 3121(v)(1),
48 and benefits provided to or on behalf of an employee if it is reason-
49 able to believe that the employee will be able to exclude such benefit
50 from gross income under the Code; and

51 (viii) a corporation reduces the maximum deduction amount
52 under this section (but not below zero) by the amount which it
53 would have included in the applicable employee remuneration of the
54 employee for the taxable year, but for being disallowed by section
55 280G of the Code.