

118TH CONGRESS
1ST SESSION

H. R. 2628

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

IN THE HOUSE OF REPRESENTATIVES

APRIL 13, 2023

Mrs. WATSON COLEMAN (for herself, Mr. CARSON, Mr. GREEN of Texas, and Ms. OMAR) introduced the following bill; which was referred to the Committee on Ways and Means

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 2023”.

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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