



TaxNewsFlash

Exempt Organizations

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Notice 2019-09: Interim guidance on excise tax imposed under section 4960, excess remuneration

The IRS today released an advance version of Notice 2019-09 as interim guidance regarding the excise tax imposed under section 4960 on the amount of remuneration in excess of \$1 million and on any excess parachute payment paid by an applicable tax-exempt organization to a covered employee.

Section 4960—added to the Code by the U.S. tax law (Pub. L. No. 115-97) enacted in December 2017, the law that is also referred to as the “Tax Cuts and Jobs Act”—provides that excess remuneration and excess parachute payments paid by an applicable tax-exempt organization to a covered employee are subject to an excise tax (currently at a rate of 21%).

Notice 2019-09 [PDF 557 KB] (92 pages) states that the Treasury Department and IRS intend to issue proposed regulations on the excise tax under section 4960 and that the future regulations will incorporate the guidance that is provided in today’s notice. The future regulations will be prospective and will not apply to tax years beginning before the issuance of those future regulations.

The guidance provided by Notice 2019-09 is in 39 questions and answers (Q&As), and these also include definitions of the following terms:

- Applicable tax-exempt organization
- Excess remuneration
- Covered employee
- Excess parachute payment

In addition, Notice 2019-09 instructs taxpayers how to report and pay the excise tax.

The notice state that until further guidance is issued, to comply with the requirements of section 4960, taxpayers may base their positions upon “a good faith, reasonable interpretation of section 4960” and that the guidance reflected in Notice 2019-09 constitutes such a good faith, reasonable interpretation of the statute.

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