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(Original Signature of Member)

115TH CONGRESS  
2D SESSION

**H. R.**

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

Mrs. WATSON COLEMAN introduced the following bill; which was referred to the Committee on \_\_\_\_\_

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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. DENIAL OF DEDUCTION FOR EXECUTIVE COM-**  
4                   **PENSATION UNLESS EMPLOYER MAINTAINS**  
5                   **PROFIT-SHARING DISTRIBUTIONS.**

6       (a) IN GENERAL.—Section 162 of the Internal Rev-  
7 enue Code of 1986 is amended by redesignating subsection

1 (s) as subsection (t) and by inserting after subsection (r)  
2 the following new subsection:

3 “(s) EXECUTIVE COMPENSATION PAID BY EMPLOY-  
4 ERS WHO DO NOT MAINTAIN PROFIT-SHARING DIS-  
5 TRIBUTIONS.—

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

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

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

19 “(i) employees (including part-time  
20 employees) who have been employed for at  
21 least 1 year as of the date of the distribu-  
22 tion have a right to such distribution, and

23 “(ii) the amount of such distributions  
24 are defined under such plan on the basis of

1 a measure of the receipts, profit, revenues,  
2 or earnings of such employer.

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

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

22 “(D) EXCEPTION IF DISTRIBUTIONS  
23 WOULD JEOPARDIZE THE BUSINESS.—An em-  
24 ployer shall not fail to be treated as making  
25 qualified profit-sharing distributions during the

1 taxable year to the extent that such employer  
2 establishes to the satisfaction of the Secretary  
3 by clear and convincing evidence that making  
4 such distributions would jeopardize the ability  
5 of the employer to continue as a going concern.

6 “(3) SPECIFIED EMPLOYER.—For purposes of  
7 this subsection—

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

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

22 “(4) APPLICABLE EMPLOYEE REMUNERA-  
23 TION.—For purposes of this subsection, the term  
24 ‘applicable employee remuneration’ has the meaning

1 given such term by subsection (m)(4), determined  
2 without regard to subparagraph (B) thereof.

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

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

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

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