

Deadline Approaching for Amending Certain Plans and Agreements to Preserve Exception under Internal Revenue Code Section 162(m)

Date: 11/10/09

Revenue Ruling 2008-13 (the "Ruling"), issued by the Internal Revenue Service ("IRS") on February 21, 2008, represented a significant change in the position of the IRS with respect to the "performance-based" compensation exception to the \$1 million cap on deductible compensation under Section 162(m) of the Internal Revenue Code of 1986, as amended (the "Code"). In the Ruling, the IRS stated that compensation would not be considered "performance-based" for purposes of Section 162(m) of the Code if the plan or agreement under which the compensation is paid provides that the compensation will be paid without regard to whether the performance goal is attained in either of the following situations: (i) the employee's employment is involuntarily terminated by the employer without cause or the employee terminates his or her employment for good reason, or (ii) the employee retires.