

October 5, 2006

IRS and Treasury Department Extend Section 409A Deadlines One More Year!

The IRS and Treasury Department have extended existing transition relief under Internal Revenue Code Section 409A. Code Section 409A, which governs the taxation of nonqualified deferred compensation arrangements, was enacted in 2004 and is generally effective for amounts deferred after December 31, 2004. However, the deadline for fully complying with Section 409A had been extended through December 31, 2006. IRS Notice 2006-79 (the "Notice"), released yesterday, further extends to December 31, 2007 most of the transition deadlines otherwise slated to expire December 31, 2006. While the Notice extends the deadline for full compliance with Section 409A, good faith compliance with the statute and other issued guidance is still required, and has been required since January 1, 2005. The IRS and Treasury Department anticipate issuing final regulations under Section 409A before the end of 2006.

The more significant deadlines extended to December 31, 2007 by the Notice include the following:

- Amending arrangements to comply with the provisions of Section 409A;
- Complying in good faith with the statute, Notice 2005-1, the proposed regulations and/or the final regulations;
- Changing payment elections with respect to the form and timing of payments, provided that elections made in 2006 do not accelerate payments into, or delay payments from, 2006 and that elections made in 2007 do not accelerate payments into, or delay payments from, 2007;
- Amending certain discounted stock options to provide for fixed payment dates, or substituting non-discounted stock options for discounted stock options (except as discussed below);
- Linking the form and timing of payments under an arrangement subject to Section 409A to the employee's election under a qualified plan; and
- Amending arrangements to provide for the use of the special transition rule with respect to initial deferral elections that were entered into by March 15, 2005.

Transition relief is **not extended** to the amendment or substitution of discounted stock options for top executives of public companies that have restated, or reasonably expect to restate, their financials due to failure to timely report the expense associated with such options, for example, where option backdating has been uncovered.

If you have any questions regarding the foregoing, please feel free to contact one of the attorneys listed below.

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