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TAX UPDATE – October 2010

To Our Clients, Business Partners and Friends...

At the risk of sounding like a Chicago Cubs fan... “just wait ‘til next year!” I hope this letter finds you and your business doing well (or recovering, depending on your view); and that the Minnesota Twins will figure out how to beat the \$@%& Yankees (or left-handed pitching, for that matter) sometime during my lifetime!

Thankfully, there is little to write about in terms of any new regulations or laws affecting the nonqualified (NQ) benefits arena, since our “friends” in Washington, D.C., have been too busy running for re-election to work on much of anything else lately. So allow me to highlight an important question we’ve been asked many times over the last few months:

Terms of Separation / Retirement

As our clients begin to experience retirements of key senior employees, the issue of how to keep some of their talents and experience “at work” while still allowing them to retire / cut-back on work hours has arisen. If these retiring employees are NQ plan participants, it is vitally important to be aware of guidelines in the regulations for determining whether an employee is actually retired (in the eyes of the IRS) and thus eligible to receive NQ plan payments. There are two “safe harbors” in the rules, and then much gray area in between.

Safe harbor #1: if an employee is still working 50% or more of the time they were previous to cutting back, then they are NOT considered retired under the IRC 409A regulations and they are not entitled to receive payments from a NQ plan. Safe harbor #2: if an employee cuts back to no more than 20% of their former duties / time worked, then they ARE considered retired under 409A and can receive NQ benefits. The area between 20% and 50% is gray and will depend on several factors, including how your Plan is written. Companies do have some latitude within the regulations in this area, but it is important to work with us or your legal counsel to ensure that your company doesn’t cross any lines that it shouldn’t.

American Cancer Society Information

Many of you know that I am actively involved with the American Cancer Society (ACS) here in Minnesota. I currently serve on the MN Leadership Board and am still working to raise funds and awareness for the Twin Cities Hope Lodge. If you haven’t heard about or seen the Hope Lodge, I would be happy to educate you or arrange for a tour! Enclosed is some basic contact information for the ACS and its patient support programs. Please keep it, or pass it along to someone in your life that has been touched by cancer. And let me know if you’d like to get involved, we can always use more volunteers!

Thank you for the chance to be of service. Please let us know if we can provide you with any additional information related to these or other key employee compensation / benefit issues.

A handwritten signature in black ink, consisting of the letters "STR" in a stylized, cursive font, enclosed within a hand-drawn oval.