

TAX UPDATE - November 2006

To Our Clients, Business Partners and Friends...

We hope this finds you and your business doing well and that you are able to take time with friends and family as we move into the year-end business and holiday rush. Here is our final update before the end of the year on various nonqualified plan tax and accounting issues:

Pension Protection Act of 2006 (PPA)

President Bush signed the PPA into law in August and, with it, created some new Corporate Owned Life Insurance (COLI) rules. These rules now require the informed consent of insureds [MCR clients already do this]; restrict COLI purchases to the lives of highly-compensated employees [our clients currently comply]; and require ongoing disclosure and recordkeeping of COLI policies owned by a Company [we will provide all of the required information to our clients]. *The rules only apply to policies purchased after the enactment of the law.*

Plan Amendment / Documentation under §409A

The deadline for plan amendments has been postponed until December 31, 2007 – assuming plans are being operated in good faith under the proposed regulations. As we have since the law passed in 2004, we continue to recommend that plans in effect prior to January 1, 2005, NOT be amended until final guidance is received. Our latest information suggests that final regulations may not be complete until the first quarter of 2007. *We will be initiating a project in 2007 to assist all clients with the task of plan document amendments.* If you have questions about whether your plan needs to be amended and/or when to do so, please contact us.

Participant Elections under §409A

The latest IRS Notice (#2006-79) provided transition relief such that all nonqualified plan participants will have a window in 2007 to make changes to their payout elections - without having to comply with the forced five-year delay provisions under 409A. We are not asking participants to do this in 2006 since the regulations aren't final and everyone would prefer to do this process once – and the right way if possible!

Split-Dollar Plan Accounting under FASB rules

The Financial Accounting Standards Board (FASB) recently ratified an interpretation of its “Accounting for Post-Retirement Benefits other than Pension rules” (FAS 106 and APB 12) that requires companies to accrue balance sheet liabilities and income statement expenses related to split-dollar life insurance arrangements. However, since it is quite counter-intuitive (to say the least!) and difficult to determine the amounts to report, FASB has delayed the effective date until after December 15, 2007. Stay tuned for more information on this issue in future letters.

Thank you for the chance to be of service. Let us know if we can provide you with additional information related to the above topics, or regarding compensation and benefit issues in general.

