

TAX UPDATE - July 2007

To Our Clients, Business Partners and Friends...

We hope this note finds you well and that you are able to take time with friends and family as we move into “summer vacation mode.” Here is an update on the nonqualified plan tax rules and regulations that you have, no doubt, been breathlessly awaiting...

Plan Amendment / Documentation under §409A

The December 31, 2007, deadline for plan amendments is going to be here before you know it. Since the final regulations were released in April, many hours have been spent by countless advisors in the industry to understand all of the “nooks and crannies” in the regulations. There are a few major areas where plan designs may need to be re-thought in order to comply:

- ◆ **Retirement** will now only be definable in one way (without an alternate “early retirement provision”) if the plan design provides for different payouts at retirement vs. termination.
- ◆ Definitions of **Disability** and **Change in Control** will now need to fit within the strict regulatory framework provided.
- ◆ Elections for **deferral of bonus compensation** must be made no later than 6 months into the 12-month required earnings period. Bonus plans must also be formally documented if companies wish to wait until this 6-month deadline. The “safe harbor” continues to be electing bonus deferrals in the plan year prior to the year in which the bonus is earned.

We are now in the beginning phase of our project 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 IRS provided transition relief so 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 will be asking ALL plan participants to attend in-person enrollment meetings in 2007 to hear the impact of the final regulations and how it may affect their own individual retirement and financial planning.**

COLI Reporting Regulations

The new Corporate Owned Life Insurance (COLI) rules we have mentioned before require the ongoing disclosure and recordkeeping of COLI policies owned by a Company. ***The rules only apply to policies purchased after August 17, 2006.*** The IRS recently announced that they expect to have the regulatory guidance for this requirement completed later this summer – and that the reporting format will be a standalone paper information return.

Thank you for the chance to be of service. Let us know if we can provide you with additional information related to management compensation and benefit issues.

