

TAX UPDATE - April 2006

To Our Clients, Business Partners and Friends...

We hope this letter finds you and your business doing well. We trust that everyone survived winter, maybe enjoyed some warm weather on spring break, and is now awaiting the arrival of summer. Here is some information on items of interest in the world of deferred compensation:

W-2 Information Reporting / Withholding

As we reminded you in January, the 2005 information requirements were suspended until further notice, but the actual payroll tax withholding rules under §3121(v)(2) did NOT change. There has not been any additional news from the IRS on this issue since the December announcement that suspended the reporting requirements. We still hope to receive additional guidance by the end of June but, as with all government-related deadlines, don't hold your breath – just in case.

Plan Amendment / Documentation under §409A

As previously reported, the requirement for plan amendments has been delayed until December 31, 2006 – assuming that plans are operated in good faith under the proposed regulations. We have begun to see various providers and advisors suggest that employers begin to address these plan amendments now – often charging additional fees for the work (beyond the legal fees which will be required.) **However, we continue to recommend that plans in effect prior to January 1, 2005, NOT be amended until more guidance is received.** There are still some important details that have not been cleared-up by Treasury and to embark on plan amendments now is premature. It may help the provider/advisor with their summer workflow plans (or generate more fee revenue), but it is not in the best interest of most plan sponsors to make changes yet.

We do NOT charge fees for this work to our ongoing clients, because this is part of the service you have come to expect - and because we expect to deliver it as part of our “value-proposition” for clients. We are also working with our main legal counsel on making “common” language changes that would apply to most plans. Once these are complete, we will be able to address client-specific plan design issues when the timing is right (i.e. after additional Treasury guidance is received). This will make the legal document amendment process more efficient for clients in terms of both the time and money required to effect the needed changes.

This bears repeating: **we continue to recommend that plans in effect prior to January 1, 2005, NOT be amended until more Treasury guidance is received.** If you have questions about whether or not your specific plan needs to be amended and when is the right time to do so, please contact us.

Thank you for the chance to be of service. Let us know if we can provide additional information to you or your firm in the areas of management compensation and benefit issues.

