

Rosen Seymour Shapss Martin & Company LLP
Certified Public Accountants & Profitability Consultants

November 2008

Issue: 4

BENEFITS BLAST

Greetings!

Welcome to the Employee Benefits & Executive Compensation Service Group's Benefits Blast! (a publication of Rosen Seymour Shapss Martin & Company LLP). Here is where you will receive periodic updates on all your employee benefits and executive compensation needs.

Employee benefits programs and executive compensation issues are more complex than ever - tax laws and the applicable statutory schemes are continually changing, and increasingly employers must consider international implications. These issues also are critical to maintaining continuity in your workplace and retaining key employees.

We welcome your questions or comments about the topics discussed or related ones. Please feel free to contact us at 212-303-1806 or e-mail us at aneumark@rsmcpa.com and let us know how we can be of assistance.

Sincerely,

Avery E. Neumark, CPA, JD
 Partner-in-Charge of Employee Benefits & Executive Compensation

FINAL REMINDER

THE FOLLOWING ARE BENEFIT RELATED
 ITEMS THAT MUST BE COMPLETED OR
 ADDRESSED BEFORE THE END OF 2008

In This Issue

**Non Qualified
 Deferred
 Compensation Plans
 Must Be Brought Into
 Compliance With New
 IRS Regulations**

**New 403(b) Plan
 Filing And Audit
 Regulations Require
 Plans Be In Place By
 Year End**

**You Can Still Make A
 Charitable
 Contribution From
 Your IRA Or Roth
 IRA - But Do It
 Timely And Do It
 Right**



**Rosen Seymour Shapss
 Martin & Company LLP**

**757 Third Avenue
 New York, NY 10017**

**Telephone 212-303-1800
 Facsimile 212-755-5600
 Email info@rsmcpa.com**

**Please visit our website at
www.rsmcpa.com**

NON QUALIFIED DEFERRED COMPENSATION PLANS MUST BE BROUGHT INTO COMPLIANCE WITH NEW IRS REGULATIONS

An Independent Member
of Polaris International



In April of 2007 the Internal Revenue Service released final regulations regarding the proper treatment of deferred compensation arrangements for them to be in compliance with Internal Revenue Code Section 409A ("IRC 409A"). These final regulations require that all deferred compensation plans, not otherwise exempted, be amended to comply with the code by December 31, 2008. Failure to do so can result in an excise tax of up to 20% of the disallowed deferred amount plus interest.

Deferred compensation is broadly defined by the regulations to include most legally binding rights to receive compensation that will or **may** be paid in a later year. IRC 409A imposes certain constraints on both the timing and form of Non Qualified Deferred Compensation ("NQDC"). Examples of NQDC include:

- Severance packages
- Employment agreements
- Bonus arrangements
- Restricted stock and discounted stock options, including stock appreciation rights
- Agreements not to compete
- Reimbursement payments
- Tax gross up arrangements
- Indemnification programs

Independent contractors and those companies using their services are included under the regulations.

The regulations exclude most compensation paid no later than two and one half months after the end of the tax year in which the right to the compensation vests, death benefits, sick leave and disability pay, incentive and non-qualified stock options **not** issued at a discount and benefits provided under a **qualified** retirement plan, e.g. 401(k), 403(b) and 457(b) plans.

Since IRC 409A was adopted, taxpayers have been permitted to comply with its provision in good faith with available guidance. With the issuance of final regulations that now changes. Taxpayers should review **all** deferred compensation

arrangements for possible classification as NQDC. IRC 409A further requires that all arrangements **be in writing**.

It is important to identify which plans need to be amended, which arrangements need to be formalized and to consider alternatives and options regarding the restructuring of such plans as soon as possible. **New agreements, and existing plan amendments must be in place by the end of this year** and all deferral elections made within prescribed time limits. That leaves little time to review, analyze, prepare, execute and adopt. Now is the time to contact us if you have any concerns.

NEW 403(b) PLAN FILING AND AUDIT REGULATIONS REQUIRE PLANS BE IN PLACE BY YEAR END

The IRS has issued new regulations concerning 403(b) tax sheltered annuities (retirement plans for government and non profit organizations). The new regulations represent the first major revision of rules governing such plans in more than four decades. For the most part, the new regulations are effective for plan years beginning after **December 31, 2008**.

In general, a 403(b) plan is a retirement plan sponsored by a not-for-profit organization for its employees. Plan participants have individual accounts, which can be either an annuity contract or a custodial account investing in mutual funds, or a combination of both. Contributions to the plan can include both elective employee salary reductions and/or employer contributions.

Under the new regulations, most 403(b) plans will be required to file a full and complete Form 5500, and have their financial reports audited, if they have 100 or more participants at the **beginning of the plan year**. Reporting requirements will be on-par with other ERISA covered retirement plans.

If you have a 403(b) plan it is essential to determine if your plan is required to file under the new regulations, make sure that your plan has a **written document** that meets all the current standards, review contracts with outside custodians and service providers, and organize records to determine what type of reporting is applicable to your plan. **Since the determinant of many of the reporting requirements is the number of participants at the beginning of the plan year,**

it is important to gather the historical data necessary to ensure that the balances reported at the end of the 2008 plan year are correct and can be verified.

We at RSSM have the experience and expertise to guide you through the process of determining what your reporting requirements are, and to assist you in designing, implementing and auditing your plan on a timely basis.

YOU CAN STILL MAKE A CHARITABLE CONTRIBUTION FROM YOUR IRA OR ROTH IRA - BUT DO IT TIMELY AND DO IT RIGHT

The Emergency Economic Stabilization Act of 2008 extended the tax code provision enabling direct transfers from IRA accounts through the end of 2008. If you are 70-1/2 years of age or older you can make a charitable contribution of up to \$100,000 directly from your IRA account. The amount contributed will count towards your annual minimum distribution requirement, and will not be included in income. In addition, you will realize the full benefit of a contribution that might otherwise be limited as an itemized deduction. To be eligible you must make the contribution by **December 31, 2008** and you must do it right. Please contact us to make sure the necessary paperwork is executed timely and correctly.

EMPLOYEE BENEFITS & EXECUTIVE COMPENSATION SERVICES GROUP

Rosen Seymour Shapss Martin & Company LLP

Please visit our website at www.rssmcpa.com

[Forward email](#)

✉ **SafeUnsubscribe®**

This email was sent to amorris@rssmcpa.com by amorris@rssmcpa.com.
[Update Profile/Email Address](#) | Instant removal with [SafeUnsubscribe™](#) | [Privacy Policy](#).

Email Marketing by



Rosen Seymour Shapss Martin & Company LLP | 757 Third Avenue | New York | NY | 10017