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Certified Public Accountants & Profitability Consultants

*Employee Benefits and Executive Compensation Services
Group*

RSSM Alert

**Important Change in IRS Section 409A Compliance
Deadline for Nonqualified Deferred Compensation Plans**

To Clients and Friends of the Firm:

On September 10, 2007, the Treasury Department and the IRS announced, in IRS Notice 2007-78, that companies will have until December 31, 2008, to bring documents into compliance with the final nonqualified deferred compensation regulations under Section 409A of the Internal Revenue Code. Previously, the deadline was December 31, 2007.

Section 409A applies to a broad variety of deferred compensation arrangements and sets forth requirements that affected plans must satisfy. Any company with a nonqualified deferred compensation plan - a deferred compensation plan that is generally designed to favor only certain individuals or groups of individuals - should be certain that the plan is in compliance with the law. The penalties for noncompliance can be severe. Plan participants will be taxed on plan benefits at the time of vesting, and a 20% penalty tax and potential interest charges also will apply.

It is important to note that the notice extends only the time for bringing plan documents into conformity with Section 409A. It does not extend the effective date of the final regulations, which remains January 1, 2008.

This means that, although plan sponsors now have until December 31, 2008, to conform their plan documents to Section 409A, they must operate and administer their plans in compliance with the final Section 409A regulations by January 1, 2008. (They must also have operated their plans in "good faith" compliance with Section 409A retroactive to 2005, when the requirements first went into effect.)

Plan sponsors should identify all plans or arrangements that may be subject to Section 409A and have them reviewed to ensure that they are operationally and administratively Section 409A compliant. If they have plans that are not compliant, they should bring the plans - and plan documents - into conformity with Section 409A as soon as possible but no later than the applicable deadlines.

The Treasury Department and the IRS expect to issue further guidance regarding a limited voluntary compliance program that will help companies correct specific unintentional operational violations of Section 409A. No date has been set for issuing

that guidance.

Should you have any questions or find out how exactly this IRS notice affects your nonqualified compensation plan, please feel free to contact me at 212-303-1806 or e-mail me at aneumark@rsmcpa.com.

Sincerely,
Rosen Seymour Shapss Martin & Company LLP

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

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