



A Law Firm in the People Business

Section 409A Deadline Looms

No Extensions Anticipated

The final deadline for amending all deferred compensation plans to comply with Code Section 409A is **December 31, 2008**. All deferred compensation plans must be reviewed, and in most cases, updated by that date.

Code Section 409A is a very broad statute, and it impacts many arrangements that are not traditionally considered "deferred compensation." Therefore, it is important to review all compensation arrangements well before the **December 31 deadline**.

To get started on reviewing and updating your Code Section 409A arrangements, please call Don Mazursky (404.888.8840), David Putnal (404.888.8836), Glenn Infinger (404.888.8845), Toby Walls (404.888.8870), or Teri King (404.888.8847).

IRS RULES ON PROTOTYPE AND VOLUME SUBMITTER PLANS

In 2005, sponsors of prototype and volume submitter retirement plan documents were required to update their documents for the Economic Growth Tax Relief and Reconciliation Act of 2001 ("EGTRRA") and file these updated documents with the IRS. This spring, the IRS finished its review of these documents and began issuing opinion letters and advisory letters on these documents.

Adoption of New Plan Documents Required. If you are currently using a prototype or volume submitter plan document, you should have received (or should soon be receiving) a copy of the updated and IRS-approved document from the company that sponsors your plan document. You are required to adopt this new plan document by **April 30, 2010**.

Optional Individual Determination Letters. Employers who timely adopt these new documents generally can rely on the opinion letters or advisory letters that the IRS has already issued on these documents. However, in some circumstances, employers may want to file these documents with the IRS for individual determination letters.

Employers should consider filing for individual determination letters under the following circumstances:

- Changes have been made to a prototype document that are not provided for in the adoption agreement (for example, a plan document includes an addendum or amendment with special rules);
- Extensive or complex changes have been made to a volume submitter document;
- The plan was individually designed in the past (or had individually designed elements) and is not covered by a previous individual determination letter;
- The plan sponsor wants a specific demographic ruling from the IRS (such as a ruling that the plan satisfies the IRS's nondiscrimination rules or whether a partial termination of the plan has occurred); or
- The plan is a "multiple employer plan" covering companies that are not part of the same controlled group.

If your plan falls into one of these categories, you will need to file for an individual determination letter no later than **April 30, 2010**.

If you have questions about adopting an updated prototype or volume submitter plan document, or if you are not sure if you need to apply for an individual determination letter, please contact David Putnal (404.888.8836), Toby Walls (404.888.8870), or Teri King (404.888.8847).

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