

FINAL DEFERRED COMPENSATION REGULATIONS DELAYED!

Today, the Internal Revenue Service issued Notice 2006-79, which extends the transitional relief available under Code Section 409A.¹ Code Section 409A was enacted as part of the American Jobs Creation Act of 2004 and imposes new tax rules governing the time and manner in which nonqualified deferred compensation can be paid. The section is generally effective for amounts deferred on or after January 1, 2005.

The Internal Revenue Service first issued Notice 2005-1, which provided guidance about the application of Code Section 409A and included fairly broad transitional relief that expired on December 31, 2005. Some of the transitional relief was extended until December 31, 2006, under proposed regulations issued on October 4, 2005. Recognizing that final regulations will not be issued until later this year, the Internal Revenue Service again extended certain of the transition relief provisions:

- Deferred compensation plans must be amended and restated to comply with the new rules not later than December 31, 2007; previously, the date was December 31, 2006. Prior to amendment, plans must continue to be operated in good faith compliance.
- New elections as to the time and form of payment can be made until December 31, 2007; previously, elections were permitted until December 31, 2006. These elections can accelerate or postpone the payment of deferred compensation, except that any election made in 2006 cannot change payments otherwise scheduled to be made in 2006, and any election made in 2007 cannot modify payments otherwise scheduled in 2006.
- Until December 31, 2007, “linkage” of payment elections between qualified and nonqualified plans is permitted. Under the linkage rule, both the time and form of payment under a nonqualified plan can be governed by the time and form of payment elected under a qualified plan (such as linking payments under a supplemental executive retirement plan, or SERP, to a participant’s payment elections under a defined benefit plan).

Finally, today’s notice provides that final regulations under Code Section 409A will not be effective until January 1, 2008.

This memorandum is for informational purposes only and is not intended as legal advice. For more information about Code Section 409A, contact any of the members of our executive compensation and employee benefits practice:

Jane Armstrong	504-584-9244	armstroj@phelps.com
Debbie Dees	601-360-9334	deesd@phelps.com
Karleen Green	225-376-0244	greenk@phelps.com
Jo Ann Butler	504-679-5509	butlerj@phelps.com
Seale Pylate	601-360-9342	pylates@phelps.com
Jason Loden	601-360-9744	lodenj@phelps.com

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¹ Reference is to the Internal Revenue Code of 1986, as amended (the “Code”).