

IRS Extends Section 409A Amendment Period 1 Year, Announces Voluntary Correction Program Likely

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Overview of Latest Developments

On April 10, 2007, the IRS issued final regulations under Section 409A of the Internal Revenue Code of 1986, as amended (“Section 409A”). The final regulations take exclusive effect January 1, 2008. At the time the final regulations were published it was announced that by December 31, 2007, all arrangements subject to Section 409A were required to be amended to be in full operational and documentary compliance with the final regulations. However, in Notice 2007-78 (announced September 10, 2007), the IRS announced that the deadline for documentary compliance is generally extended to December 31, 2008.

Nonetheless, as of January 1, 2008, only the final Section 409A regulations will be in effect, and therefore, good faith reliance can be placed **only** on the final Section 409A regulations and may not be placed on the proposed regulations or prior IRS notices under Section 409A.

In other words, the deadline for the paperwork project has been extended, but commencing on January 1, 2008, taxpayers must comply in operational practice with the substantive requirements of Section 409A as set forth in the final regulations.

Discounted stock options and stock appreciation rights that must be amended to raise the exercise price or provide for a fixed exercise schedule must still be amended by December 31, 2007.

In addition, the IRS announced it is working on a voluntary compliance program, whereby the liability for inadvertent violations of Section 409A’s provision may be limited through prompt action.

We will provide further detail on the effects of IRS Notice 2007-78 in the near future.

For more information on this, or related matters, please contact any attorney in the Equity Compensation and Employee Benefits Group:

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