



Internal Revenue Code Section 409A Relief Extended to 12-31-2008

IRS also grants relief with respect to reporting 409A deferrals for 2007

The IRS on October 23, 2007 issued IRS Notice 2007-86 extending most of the transition relief that was included in IRS Notice 2006-79 to December 31, 2008. On the same day, IRS Notice 2007-89 was issued with respect to 409A reporting for 2007.

This transition relief in Notice 2007-86 includes the following:

- A 409A plan may be amended to permit a change of time and/or form of payment election to be made by not later than December 31, 2008 and not be subject to the 409A anti-acceleration or subsequent deferral rules; and
- A 409A plan with a time and form of payment linked to an employee election under a related qualified retirement plan may continue to be administered in this manner until December 31, 2008, provided the linked time and form of payment was in effect under the 409A plan on October 3, 2004.

Other transition relief in IRS Notice 2007-86 which is extended to December 31, 2008 relates to: (i) substitutions of non-discounted stock options and stock appreciation rights for discounted stock options and stock appreciation rights, and (ii) good reason provisions in employment agreements with respect to separation from service payments.

The notice does not extend the transition relief in Notice 2006-79 relating to (i) the application of a substitution rule to employment agreements, (ii) predetermined cashouts, and (iii) certain funding restrictions.

The notice extends the reasonable good faith compliance with 409A standard through 2008 with the following clarifications:

- The guidance in IRS Notice 2005-1 can be relied upon through December 31, 2008;
- The 409A proposed regulations can be relied upon through December 31, 2007; and

- Reliance on the final 409A regulations will be treated as reasonable good faith compliance.

Notice 2007-89 requires that amounts which are includible in income in 2007 due to a violation of 409A be reported on a W-2 Form for an employee or on a 1099-MISC Form for a non-employee. This notice also provides that deferrals under 409A plans in 2007 do not need to be reported to the IRS.

For more information, please contact Haynes Benefits PC at 816-875-1919 or visit www.haynesbenefits.com.