

Summer 2007

Benefits Alert

At Last! Final Regulations for Nonqualified Deferred Compensation Plans

After much anticipation, the Internal Revenue Service issued final regulations under Section 409A of the Internal Revenue Code providing guidance for nonqualified deferred compensation arrangements. The final regulations substantially follow the guidance set forth in the proposed regulations issued in October 2005. While the general regulatory structure in the proposed regulations was retained, specific concerns of practitioners were addressed and the rules in several areas were liberalized.

In general, Section 409A imposes requirements on nonqualified deferred compensation arrangements to specify the timing of distributions, prohibit the acceleration of benefits, and require that deferral elections be made within certain time frames. Failure to satisfy these requirements will result in immediate income taxation to the executive of all amounts deferred under the arrangement, plus a 20% additional tax and interest, even if amounts are not currently payable under the plan.

Section 409A also applies to any nonqualified arrangement for the deferral of compensation. An arrangement provides for the deferral of compensation if the executive has a legally binding right during a taxable year to compensation that is or may be payable to the executive in a later taxable year.

A wide variety of deferred compensation arrangements may be affected by these regulations. Nonqualified deferred compensation arrangements may include performance-based compensation, equity-based compensation (e.g., stock options, stock appreciation rights, and other equity-based compensation), restricted property, separation pay plans and window programs, indemnification and liability insurance plans, legal settlements, certain educational benefits, or bonus arrangements.

The IRS has separately issued guidance on the impact of Section 409A on split dollar life insurance arrangements.

Deadline for Plan Amendments. Plans must be amended in written form to conform to the requirements of Section 409A and the final regulations no later than December 31, 2007.

If you would like to discuss how these changes will impact your company's nonqualified deferred compensation arrangements, please contact one of the members of our Employee Benefits team listed on the reverse of this Alert.

Copyright © 2007 Kaufman & Canoles, P.C. All Rights Reserved. The contents of this publication are intended for general information only and should not be construed as legal advice or a legal opinion on specific facts and circumstances.

PRSRRT STD
US POSTAGE
PAID
PERMIT #2
NORFOLK, VA

Inside This Issue

- At Last! Final Regulations for Nonqualified Deferred Compensation Plans

K a u f m a n & C a n o l e s E m p l o y e e B e n e f i t s & E x e c u t i v e C o m p e n s a t i o n K a u f m a n & C a n o l e s E m p l o y e e B e n e f i t s & E x e c u t i v e C o m p e n s a t i o n K a u f m a n & C a n o l e s E m p l o y e e B e n e f i t s & E x e c u t i v e C o m p e n s a t i o n K a u f m a n & C a n o l e s E m p l o y e e B e n e f i t s & E x e c u t i v e C o m p e n s a t i o n K a u f m a n & C a n o l e s E m p l o y e e B e n e f i t s & E x e c u t i v e C o m p e n s a t i o n K a u f m a n & C a n o l e s E m p l o y e e B e n e f i t s & E x e c u t i v e C o m p e n s a t i o n K a u f m a n & C a n o l e s E m p l o y e e B e n e f i t s & E x e c u t i v e C o m p e n s a t i o n K a u f m a n & C a n o l e s E m p l o y e e B e n e f i t s & E x e c u t i v e C o m p e n s a t i o n K a u f m a n & C a n o l e s E m p l o y e e B e n e f i t s & E x e c u t i v e C o m p e n s a t i o n

Employee Benefits & Executive Compensation Team

James S. Kolan has an extensive background in tax planning and executive compensation matters for over 20 years. He is the Chairman of the firm's Employee Benefits Practice Group, where his practice includes pensions, profit sharing, ESOPs, stock bonus plans, deferred compensation and other executive compensation programs and employee welfare benefit plans. His practice involves advising large and small businesses and government entities. Rick can be reached at 757.624.3285 or rkamp@kaufcan.com.

Richard C. Mapp, III has practiced in the area of employee benefits and executive compensation matters for over 20 years. He is the Chairman of the firm's Employee Benefits Practice Group, where his practice includes pensions, profit sharing, ESOPs, stock bonus plans, deferred compensation and other executive compensation programs and employee welfare benefit plans. His practice involves advising large and small businesses and government entities. Rick can be reached at 757.624.3285 or rkamp@kaufcan.com.

Shad C. Fagerland's broad employee benefits background includes experience in pension and welfare benefit plan design as well as fiduciary and benefits litigation. He is a member of the Taxation Section of the American Bar Association and an active member of the District of Columbia Bar. Prior to joining Kaufman & Canoles, Shad practiced in the Employee Benefits group at a Washington, DC tax boutique. Shad can be reached at 757.259.3828 or sctfagerland@kaufcan.com.

Carol M. Williams is a paralegal assigned to the attorneys in the Employee Benefits Practice Group. She has over ten years of ERISA and Employee Benefits experience. She can be reached at 757.624.3149 or cmwilliams@kaufcan.com

Priscilla Balderama is a Certified Legal Assistant assigned to the attorneys in the Employee Benefits Practice Group. She can be reached at 757.624.3136 or pbalderama@kaufcan.com

L. Scott Seymour counsels large and small business clients in matters involving business transactions, entity formation and mergers and acquisitions, including employee benefits and deferred compensation arrangements. Scott has over ten years experience in guiding his clients through complex commercial transactions and developing practical and cost effective solutions to business problems. Scott can be reached at 757.624.3113 or lseymour@kaufcan.com