PUBLICATION

REMINDER: IRC §409A Deadline Looms for Deferred Compensation Arrangements

October 10, 2008

The **December 31, 2008, deadline** for bringing ALL deferred compensation arrangements into compliance with the requirements of Internal Revenue Code §409A is rapidly approaching. Failure to act now could result in the imposition of significant additional taxes.

Section 409A defines deferred compensation very broadly - encompassing many different (and often unexpected) types of arrangements. The rules apply to any service provider - whether or not an employee. As a result, all compensation arrangements should be reviewed for compliance with §409A in time to have any changes made, reviewed, approved and adopted by year-end. The following is a list of some of the types of arrangements that could be subject to §409A:

- Employment Agreements
- Equity Plans (e.g., stock options, phantom equity, and SARs)
- Bonus Plans and Agreements (Annual or Long-Term)
- Traditional Nonqualified Deferred Compensation Plans (e.g., SERPs, Top Hat Plans)
- Change in Control Arrangements
- Severance Plans and Agreements

Employers have only until the end of 2008 to make necessary changes. Failure to comply can result in immediate taxation to the service provider, and will increase the effective tax rate by at least 20% of the compensation value. States also may impose their own additional tax for §409A violations, and penalties and interest may also apply. Moreover, §409A compliance avoids unhappy employees as a result of the imposition of additional federal or other taxes. Achieving §409A compliance in both form and operation can also facilitate the consummation of a corporate merger, acquisition or financing transaction since employers are regularly being asked to provide representations and warranties regarding §409A compliance.