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## Why Put Off Until Tomorrow: The Latest on Deferred Compensation

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Deferred compensation works well as a means to reward key employees. It also can have certain benefits for business owners of various stripes. However, Section 409A of the Internal Revenue Code, enacted as part of the American Jobs Creation Act of 2004, has muddied the waters a bit over the past couple of years. It imposes a variety of requirements on many different types of arrangements, including some that are not immediately recognizable as deferred compensation schemes. On April 10, 2007, the IRS issued the final regulations for Section 409A. This Bulletin covers the highlights.

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### THE LAST WORD

In this case, we'll start at the end and work backwards. In clarifying the regulations the IRS set a deadline for amending plans and agreements to comply with Section 409A:

**December 31, 2007.**

If you have any type of *non-qualified* deferred compensation plan, you will need to review all of them for compliance. These plans include:

- ❖ Elective deferred compensation plans/agreements.
- ❖ Non-elective deferred compensation plans/agreements.
- ❖ Severance agreements.
- ❖ Deferred bonus arrangements.
- ❖ Equity compensation arrangements.

- ❖ Employment agreements that provide for payment on termination.

As you can see, the range of plans and arrangements covered by Section 409A is fairly broad. Also note that you may have some deferral elections in place under older plans; these will need to be reviewed, too. The IRS has warned that failure to comply with these rules could result in significant and detrimental tax results.

### WHAT TO LOOK FOR

The new regulations tend to follow the proposed regulations. In particular they:

- ❖ Clarify the definition of a deferred compensation payment.
- ❖ Add guidance for the short-term deferral exception.

