



NYLEX News

Premier Executive Benefits Plan Services

October, 2005

Section 409A Alert

To our clients and friends

This issue of NYLEX News discusses the recently issued proposed regulations on deferred compensation under Internal Revenue Code section 409A. This Code section covers plans and arrangements that provide nonqualified deferred compensation to employees, directors and other service providers. Please send comments about this issue of our newsletter, as well as suggestions for future issues, to our Stamford, CT office.

Proposed Section 409A Regulations

- Critical guidance on section 409A
- Date for amending plan documents extended to December 31, 2006

INTRODUCTION

On September 29, 2005, Treasury and the Internal Revenue Service issued proposed regulations on deferred compensation under section 409A. This Code section governs nonqualified deferred compensation plans and arrangements covering employees, directors and other service providers. This Alert is a brief summary of these proposed regulations. A subsequent Newsletter will provide a more comprehensive analysis.

EFFECTIVE DATES

The effective date for the regulations is January 1, 2007. Extending the safe harbor date of previously announced guidance, a plan adopted on or before December 31, 2006 will be

treated as complying with Section 409A if the plan is operated through that date in good faith compliance with section 409A and Notice 2005-1. A taxpayer who follows the proposed regulations will be deemed to satisfy this good faith standard.

The proposed regulations also extend for one year, to December 31, 2006, the date for amending plan documents to comply with Section 409A. The proposed regulations also extend the deadlines for certain other changes and amendments.

WRITTEN PLAN REQUIREMENT

Although 409A does not explicitly state that a deferred compensation plan be in writing, because the plan must contain certain provisions in order to meet the requirements of section 409A, the proposed regulations include a requirement that the plan or arrangement must be in writing.

SPLIT-DOLLAR LIFE INSURANCE ARRANGEMENTS

Many commentators suggested that split-dollar life insurance arrangements be excluded from the requirements of section 409A. The preamble to the proposed regulations concludes that arrangements that provide only death benefits for the service provider may be so excluded. However, an endorsement arrangement where the policy is owned by an employer who irrevocably promises to pay premiums in future years may be characterized under the proposed regulations as a deferred compensation arrangement.

SHORT-TERM DEFERRALS

The proposed regulations retain the Notice 2005-1 provision that payments within 2½ months after the end of the year in which an employee has a legally binding right to the amount will not be considered deferred compensation. This rule undoubtedly will be used by many as a way of avoiding the provisions of section 409A.

GUIDANCE TO BE ISSUED

The proposed regulations do not address issues relating to (1) calculating the amount of deferrals or the amount of income to be included if section 409A is violated, or (2) the timing of the inclusion of income and related

withholding requirements. Subsequent guidance is promised that will deal with these issues. In addition, future guidance is promised dealing with the consequences of funding deferred compensation arrangements.

We take great care to assure that client programs are practical and cost effective and that they are designed to achieve our clients' strategic and operational goals.

About NYLEX Benefits

NYL Executive Benefits LLC (NYLEX Benefits) provides supplemental executive benefit programs to a wide range of commercial clients. We focus on developing cost effective executive benefit solutions that are designed to attract, reward and retain key employees.

Our services are designed to assist clients at all stages in the adoption and operation of executive benefit programs, and include:

- Initial assessment
- Plan design
- Funding
- Plan implementation
- Ongoing administration

NYLEX Benefits' professional staff includes the following professional disciplines, all dedicated to supporting our clients' programs, processes, systems and services:

- Accountants
- Actuaries
- Attorneys
- Benefit specialists
- Insurance specialists

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