



# NYLEX News

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## ***W-2 Reporting Alert***

### **IRS Notice 2008-115 Waives W-2 Reporting of Deferred Amounts**

#### **Waiver of Reporting Amounts Deferred**

This week the Internal Revenue Service (IRS) issued Notice 2008-115 providing interim guidance to employers and payers on reporting and wage withholding requirements. This notice confirms an earlier informal announcement that for 2008 an employer is not required to report amounts deferred during the year under a nonqualified deferred compensation plan subject to Section 409A either on Form W-2 or on Form 1099-MISC.

#### **Reporting Amounts Includible In Income Because of a Failure To Comply With 409A**

The IRS has not waived the requirement that amounts includable in income because of a failure to comply with Section 409A of the Internal Revenue Code be reported for 2008. These amounts must be reported on Form W-2 in Box 12, using Code Z, or on Form 1099-MISC. In the case of a plan failing to satisfy the requirements of Section 409A, the employee would be subject to immediate income inclusion and penalties, including an additional 20 percent tax and interest.

The amount includible in gross income and required to be reported by the employer or payer equals the portion of the total amount deferred under the plan that, as of December 31, is not subject to a substantial risk of forfeiture and has not been included in income in a previous year.

The amounts to be reported are determined as follows:

- Account Balance Plans - Entire account balance as of December 31.
- Nonaccount Balance Plans – Amounts That Are Reasonably Ascertainable - Present value of all future payments.
- Other Deferred Amounts - Must be determined under a reasonable, good faith application of a reasonable, good faith method.

The provisions of Notice 2008-115 are intended as interim guidance, effective only until final regulations are issued.

Nothing contained herein is, or should be construed as, legal, tax, or accounting advice, nor was it intended nor can it be used for the purpose of avoiding penalties under the Internal Revenue Code or applicable state or local tax provisions. This communication was written to support the promotion or marketing of the matters or transactions addressed herein, and clients should always consult with their independent professional advisors to seek advice on the applicability of this information to their particular circumstances.