

IMPORTANT TAX ALERT

*SECOND REMINDER:*  
NONQUALIFIED DEFERRED COMPENSATION ARRANGEMENTS  
NEED TO BE IN COMPLIANCE WITH CODE SECTION 409A



The Internal Revenue Service issued final regulations under Code Section 409A. We are writing to remind you of this and what it means for you and your business. Section 409A applies to deferred compensation earned in one year but not paid until a future tax year. If your business has a nonqualified deferred compensation arrangement, then your plan documents need to be reviewed for Code Section 409A compliance. After your legal plan documents are reviewed for compliance with Section 409A, they may need to be amended or redrafted by your attorney. It is a good idea to review all of your compensation plans to determine if they contain any nonqualified deferred compensation provisions.

Code Section 409A legal documentation compliance has been postponed by the IRS until December 31, 2008. All taxpayers must however, be in compliance effective January 1, 2009. **Any applicable elections and plan amendments must be made on or before December 31, 2008. Therefore, action must be taken to amend or change any nonqualified deferred compensation plan to come into 409A compliance on or before December 31, 2008.** The costs of noncompliance with Section 409A are very high. In the event of noncompliance, all deferred income amounts are included in the employee's income immediately even though the compensation payments have not been made yet; interest is also imposed on that deferred compensation; and on top of that, a 20% penalty is imposed. Code Section 409A compliance is required to defer the income tax liability of the nonqualified deferred compensation until such time as the individual receives the money, and also to avoid the interest and penalty provisions.

In summary, if your business has a nonqualified deferred compensation arrangement, please contact our office and your attorney to arrange a meeting to discuss your current plan documents. Your attorney will then need to amend or redraft the legal plan documents as necessary for your plan to be in compliance with Code Section 409A

As one of the leading accounting and consulting firms in New Jersey, Cowan, Guteski & Co., P.A. understands the importance of complying with tax regulations. Contact Michael V. DeMola, CPA, Tax Director at 732-349-6880 extension 119 or [mdemola@cowanguteski.com](mailto:mdemola@cowanguteski.com) for more information your particular situation.

*The technical information in this document is necessarily brief. No final conclusion on this topic should be drawn without further review and consultation.*

**IRS CIRCULAR 230 DISCLOSURE:** To ensure compliance with requirements imposed by the IRS, we inform you that any tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any matters addressed herein.



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TAX ALERT: SECTION 409A COMPLIANCE