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Butler Snow has been a leading presence in the legal community for 50 years. With approximately 140 attorneys, the firm provides a broad range of services to clients on a regional and national basis from its offices in Jackson and Gulfport, Mississippi, and in Memphis, Tennessee.

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Butler Snow Gets A Facelift

At Butler Snow, the client comes first. Because we value our clients and friends, we are excited to introduce the new look of Butler Snow, including *High Points*, our newest electronic newsletter.

We are still the same firm with the same personalized attention you have come to expect; and *High Points* will serve to further our goal of keeping you abreast the latest legal changes and what those changes mean to you and your company.

We encourage you to visit our new web site, www.butlersnow.com. You'll find a new look and layout, part of our continuing efforts to improve service. If you have received other newsletters in the past, such as *Benefits Brief* or *Workplace*, you will continue to receive those newsletters as well.

We appreciate your business and look forward to our continued relationship. We welcome your feedback about www.butlersnow.com and other changes. If you have any questions, please give us a call. We remain at your service.

Sincerely,

New Regs Establish Deadline for Implementing Nonqualified Deferred Compensation Plan Changes

The Treasury Department recently issued final regulations implementing Section 409A, which was added to the Internal Revenue Code by the American Jobs Creation Act of 2004. Section 409A is the most comprehensive and far-reaching statute affecting nonqualified deferred compensation plans since 1978. Its broad reach extends not only to traditional "plans" but can also apply to:

- Post-termination provisions of employment agreements;
- Change of control agreements;
- Severance agreements;
- Split-dollar arrangements;
- Equity compensation arrangements (nonqualified stock options, SARs and similar arrangements);
- Bonus payments;
- Post-termination reimbursements;
- In-kind benefits; and
- Similar arrangements.

Section 409A imposes substantial new restrictions on the timing of distributions and changes in deferral and payment elections (among other changes) and is generally applicable to all deferred compensation arrangements other than arrangements to which the participant was fully "vested" in his or her benefit as of December 31, 2004 (so-called "grandfathered plans").

Consequences of Noncompliance

The cost of noncompliance is severe and falls most heavily on the executive/participant. From the executive/plan participant's perspective, the consequences of noncompliance include immediate taxation on all amounts deferred (the current year and all prior years) to the extent those amounts are not subject to a "substantial risk of forfeiture," a penalty equal to 20% of the taxable income amount, and an interest penalty computed based on the years in which the compensation was deferred.

From the plan sponsor's perspective, the early inclusion in the executive's income will affect the timing of the plan sponsor's deduction for such compensation and will implicate reporting and withholding obligations. More importantly though, a failure to keep the plan in compliance will cause an otherwise desirable executive "perk" to become a significant detriment and likely will frustrate the sponsor's objectives in offering the plan.

Plan Sponsor Action Items

Since enactment, the IRS has provided fairly generous transition rules for plans that have been operated in "good faith" compliance with the statute and published guidance. With the issuance of the final regulations (which total 397 pages), the IRS is now requiring that all affected plans be brought into written compliance by **December 31, 2007**. Between now and the end of the year plan sponsors should:

- Identify affected plans, arrangements and programs;
Ascertain the impact of the regulations on these plans, arrangements

- and programs;
- Redesign and amend non-grandfathered plans to comply;
- Explain changes to affected executives (and negotiate changes as necessary); and
- Implement, as applicable, new deferral and distribution elections.

We have been assisting a number of our banking and other clients with Section 409A compliance matters. Because the **December 31, 2007** deadline is rapidly approaching, we urge plan sponsors to address these issues promptly to assure timely compliance.

We will be glad to assist you with your Section 409A compliance matters. If you would like to discuss this with us or obtain an estimate of the cost of these services, please feel free to contact us.

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Contact Us



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