

# EXECUTIVE COMPENSATION

## *Alert*

NEWS FOR THE CLIENTS AND FRIENDS OF BASS, BERRY & SIMS PLC

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## IRS Provides Additional Transition Relief Under Section 409A For Nonqualified Deferred Compensation Plans

October 6, 2006

The IRS released Notice 2006-79, which extends the deadline for amending nonqualified deferred compensation plans to comply with Section 409A of the Internal Revenue Code (“Section 409A”). Under proposed regulations released in late 2005, nonqualified deferred compensation plans were previously required to be amended to reflect the requirements imposed under Section 409A by December 31, 2006. Notice 2006-79 extends this deadline to December 31, 2007.

Notice 2006-79 also provides the following additional transition relief:

- Extends the transition relief which permits payment elections under nonqualified deferred compensation plans to be linked to payment elections under qualified plans to December 31, 2007. This relief is expanded to nonqualified deferred compensation plans linked to other types of employer plans, including Section 403(b) annuities and Section 457(b) eligible plans;
- Extends the transition relief which permits participants to change their elections regarding the time and/or form of benefits due under a nonqualified deferred compensation plan to December 31, 2007. Similar to the previous transition relief under the proposed regulations, changes made by participants in 2007 may not apply to payments that would otherwise be payable in 2007 nor may such changes cause a payment not otherwise payable in 2007 to be paid in 2007;
- Extends the deadline for canceling discounted stock options or stock appreciation rights and replacing such awards with non-discounted awards to December 31, 2007. However, this additional transition relief does not apply to discounted awards held by insiders of a public company where the company has reported or reasonably expects to report additional financial expense due to the issuance of discounted awards that was not previously reported; and

- Extends the deadline for amending nonqualified deferred compensation plans to reflect the fact that such plans previously relied on transition relief regarding changes to 2005 deferral elections under Notice 2005-1 to December 31, 2007.

As under Notice 2005-1 and the proposed regulations, companies are required to continue to operate their nonqualified deferred compensation plans in good faith compliance with Section 409A during the extended transition period.

Please contact any of the following members of our Executive Compensation practice if you have questions concerning the changes to rules governing nonqualified deferred compensation:

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