

# TAX Update

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

## IRS Extends Section 409A Deadline for Documentary Compliance Only September 12, 2007

On September 10, 2007, the IRS issued Notice 2007-78, which extends the deadline for bringing nonqualified deferred compensation arrangements into *written* compliance with Section 409A until December 31, 2008. The previous deadline for written compliance was December 31, 2007. In order to qualify for the extension, employers (or participants) must designate in writing prior to January 1, 2008, if they have not already, a compliant time and form of payment for pre-2008 deferrals under a nonqualified deferred compensation arrangement.

The notice, however, did not extend other important aspects of the previous transition relief provided under Notice 2005-1, Notice 2006-33, Notice 2006-79, or the proposed regulations. In particular, employers still need to take action prior to December 31, 2007 if they plan to take advantage of the previous transition relief (e.g., modifications of the time and form of existing payment elections) and employers must operate their plans in accordance with (as opposed to in good faith compliance with) the final regulations on or after January 1, 2008.

The notice announces that the IRS anticipates issuing guidance that would provide for a limited voluntary compliance program for certain unintentional operational violations of Section 409A in the future. In addition, the notice provides limited transition relief for (i) employers to modify an existing definition of "good reason," (ii) the extension, renewal or renegotiation of employment agreements and (iii) the application of automatic cash-out provisions to installment or annuity payments.

Please contact any of the following members of our Executive Compensation Practice Area if you have any questions or need assistance regarding the implementation or administration of any nonqualified deferred compensation arrangements you maintain.

Curtis Fisher	615-742-7892	cfisher@bassberry.com	Todd Rolapp	615-742-6288	trolapp@bassberry.com
Ashley McCall	615-742-7798	amccall@bassberry.com	David Thornton	901-543-5922	dthornton@bassberry.com
Bryan Metcalf	615-742-6212	bmetcalf@bassberry.com	Jamie Wade	615-742-7946	jwade@bassberry.com
Fritz Richter	615-742-6256	frichter@bassberry.com			

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*To ensure compliance with requirements imposed by the IRS, we inform you that this message is not intended to be used, and cannot be used, by the addressee or any other person for the purpose of avoiding penalties that may be imposed under the Internal Revenue Code.*

### NASHVILLE Downtown

315 Deaderick St. · Ste. 2700  
Nashville, TN 37238-3001  
(615) 742-6200

### KNOXVILLE

1700 Riverview Tower  
900 S. Gay St.  
Knoxville, TN 37902  
(865) 521-6200

### MEMPHIS

The Tower at Peabody Place  
100 Peabody Place · Ste. 900  
Memphis, TN 38103-3672  
(901) 543-5900

### NASHVILLE Music Row

29 Music Square East  
Nashville, TN 37203-4322  
(615) 255-6161