

EXECUTIVE COMPENSATION

Alert

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

Finally - Final Regulations Issued Under Section 409A

April 12, 2007

On April 10, 2007, the Internal Revenue Service issued final regulations under Section 409A of the Internal Revenue Code. Section 409A was added to the Internal Revenue Code by the American Jobs Creation Act of 2004 and generally governs amounts deferred (or which were unvested) under nonqualified deferred compensation arrangements on or after January 1, 2005. The final regulations retain many of the key provisions of the proposed regulations issued by the IRS in late 2005. Additionally, the final regulations answer several important questions and make numerous clarifications and modifications to the proposed regulations and the other guidance that has been published since Section 409A's enactment. For example, two of the more significant improvements of the final regulations over the proposed regulations are (1) to lengthen the time that a stock option's exercise period may be extended without subjecting the option to Section 409A and (2) to provide greater detail on applying Section 409A to severance arrangements and post-separation benefit reimbursements, including providing a safe harbor regarding treating "good reason" terminations as involuntary terminations. The final regulations also clarify the application of Section 409A to short term deferral arrangements and to 457(f) plans sponsored by tax-exempt employers.

The final regulations are generally effective January 1, 2008. Until then, the "good faith compliance" standard established by the proposed regulations and prior guidance continues to apply. All arrangements that are subject to Section 409A must be in documentary compliance with the requirements of Section 409A and the final regulations by December 31, 2007. However, the final regulations include fairly lenient rules for documenting operations since Section 409A became effective. As a result, you should begin inventorying and reviewing your existing nonqualified deferred compensation arrangements to ensure that all required actions are completed by December 31, 2007.

EXECUTIVE COMPENSATION

Alert

We are currently studying the final regulations and will provide further alerts in the coming weeks. In the meantime, 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.

Bryan Metcalf	615-742-6212	bmetcalf@bassberry.com
Fritz Richter	615-742-6256	frichter@bassberry.com
Todd Rolapp	615-742-6288	trolapp@bassberry.com
David Thornton	901-543-5922	dthornton@bassberry.com
Curtis Fisher	615-742-7892	cfisher@bassberry.com

The materials contained herein have been abridged from the statutory sources and should not be construed or relied upon for legal advice. Readers are urged to consult legal counsel concerning particular situations and specific legal questions. 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
AmSouth Center
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