The deadline to amend non-qualified deferred compensation arrangements is December 31, 2008.

Time is almost up to make sure non-qualified deferred compensation arrangements comply with (or are exempt from) Section 409A of the Internal Revenue Code.

Read on for details and to learn how this deadline may affect you, your business, or your employees/consultants.

Section 409A can apply to a wide range of compensation arrangements between companies and their service providers, such as:

- employment agreements,
- non-qualified stock options,
- stock appreciation rights,
- salary and bonus deferrals,
- separation pay arrangements, and
- change of control arrangements.

If a deferred compensation plan is not (i) exempt from Section 409A or (ii) in compliance with Section 409A by December 31, 2008, the deferred compensation is subject to immediate taxation to the service provider and a 20% penalty and interest will be imposed. The company may also be subject to penalties for failure to properly report and withhold.

Amending plans (to the extent permitted by IRS guidance) to ensure they are either exempt from or in compliance with Section 409A may require providing for new elections with respect to time and form of payment, removing acceleration provisions, providing special severance payment provisions for certain employees of public companies, or, in the case of discounted stock options or stock appreciation rights, substituting such discounted stock options or stock appreciation rights for non-discounted stock options or stock appreciation rights.

**ACTION ITEMS**

1. **Immediately identify plans** subject to the provisions of Section 409A.
2. **Continue to operate plans** subject to Section 409A in good faith compliance with Section 409A and related IRS guidance.
3. **By December 31, 2008, amend plans** subject to Section 409A to comply with Section 409A’s distribution, acceleration, and election rules.
4. **By December 31, 2008, bring unexercised discounted stock options or stock appreciation rights into compliance** with the provisions of Section 409A or cancel and replace unexercised discounted stock options or stock appreciation rights with non-discounted stock options or stock appreciation rights.

Morse, Barnes-Brown & Pendleton would be pleased to assist you in reviewing your deferred compensation arrangements by the **December 31, 2008 deadline** and in taking any steps necessary.

Please contact Robert Finkel (rfinkel@mbbp.com) or Diana Española (despanola@mbbp.com) via email or at (781) 622-5930.

To ensure compliance with U.S. Treasury Regulations governing tax practice, we inform you that any U.S. tax advice contained in this communication is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.