



## IRS Extends Transition Relief for Compliance with Section 409A of the Internal Revenue Code Until December 31, 2007

On October 4, 2006, the Internal Revenue Service issued Notice 2006-79 announcing that, with certain exceptions, previously granted transition relief for compliance with Section 409A is extended through December 31, 2007. New transition relief is also provided for collectively bargained arrangements.

### TRANSITION RELIEF EXTENDED:

- **Good Faith Compliance Period:** A plan will be treated as complying with Section 409A through December 31, 2007, if it is (i) operated in reasonable, good faith compliance with Section 409A, and (ii) amended on or before December 31, 2007, to conform to the provisions of Section 409A.
- **Change in Payment Elections:** New payment elections relating to the time and form of payment may be made through December 31, 2007. However, during 2007 a participant may not change a payment election for amounts that would otherwise be payable in 2007 or cause payments to be made in 2007 that would not otherwise be payable in 2007. This corresponds to a transition rule already in effect for 2006 pursuant to which during 2006 a participant may not change a payment election for amounts that would otherwise be payable in 2006 or cause payments to be made in 2006 that would not otherwise be payable in 2006.
- **Replacement of Discounted Options and SARs:** Transition relief for replacing discounted stock options (stock options granted with exercise prices below the fair market value of the covered stock on the date of grant) with nondiscounted stock options is extended through December 31, 2007, with one significant exception. Specifically, the Notice *does not extend* transition relief to certain backdated discounted stock options granted by publicly traded companies to persons subject to the disclosure requirements of Section 16(a) of the Securities Exchange Act of 1934. Corresponding rules apply to discounted stock appreciation rights.

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*This summary is intended to be a general summary of the law and does not constitute legal advice. You should consult with competent counsel to determine applicable legal requirements in a specific fact situation.*

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- **Payments Linked to Qualified Plans:** The ability to continue to link a payment election under a nonqualified deferred compensation plan to an election under a qualified plan is extended through December 31, 2007. In addition, this transition relief is extended to payment elections linked to 403(b) plans, 457(b) plans and certain broad-based foreign plans.

**NEW TRANSITION RELIEF:**

- **Collectively Bargained Arrangements:** The Notice provides that nonqualified deferred compensation arrangements maintained pursuant to one or more collective bargaining agreements in effect on October 3, 2004, need not comply with Section 409A until the earlier of (i) the date the last of the collective bargaining agreements terminates (determined without regard to any extension thereof after October 3, 2004) or (ii) December 31, 2009.

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*We hope that you find this brief summary helpful. If you would like more information or assistance in addressing or commenting on the issues raised in this advisory, please feel free to contact:*

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