



IRS Announces Compliance Resolution Program for Certain Employees Who Exercised Discount-Priced Options During 2006

In Announcement 2007-18, the Internal Revenue Service launched a compliance resolution program (the "Program") that allows employers to pay certain additional income taxes that would otherwise be imposed on employees under Section 409A of the Internal Revenue Code in connection with the exercise of discount-priced stock options during 2006. In most instances, the exercise of discount-priced stock options during 2006 will have arisen as the result of grant of back-dated stock options. If an employer desires to participate in the Program, immediate action is required since notice of participation in the Program must be given to the IRS no later than February 28, 2007.

BACKGROUND AND OVERVIEW

Under Section 409A, stock rights granted with an exercise price that is less than fair market value of the covered stock on the actual date of grant are treated as nonqualified deferred compensation. As nonqualified deferred compensation, unless certain steps were taken to conform the stock right with the requirements of Section 409A before exercise, the income arising upon exercise of the option is subject to additional 20% income tax and an interest tax. Under the Program, an employee (other than a corporate insider) is relieved from paying the tax if his or her employer agrees to pay in accordance with the Program's requirements. The employer's payment under the Program is treated as an additional payment of compensation to the employee.

ELIGIBILITY REQUIREMENTS

- The Program only applies to discounted stock rights exercised in 2006.
- Only employees and former employees who are not (and were not at the time of grant) subject to the disclosure requirements under Section 16(a) of the Securities Exchange Act of 1934 are eligible for relief under the Program.

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- The employer must pay the full amount of the additional tax liability under Section 409A consisting of both the 20% tax and the interest tax.

TIMING REQUIREMENTS

- The employer must notify the IRS no later than February 28, 2007 of its intent to participate in the Program.
- Within 15 days of providing its initial notice to the IRS, the employer must notify the employees likely to be affected under the Program of its participation in the Program and provide the IRS with the number of employees notified.
- The employer must submit further information and full payment of the Section 409A taxes to the IRS by June 30, 2007.
- A second employer notice to all affected employees must be provided by July 15, 2007.
- The employer retains the right to withdraw from the Program or modify a submission at any time on or before June 30, 2007.

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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