

For Friends & Clients of NCR Executive Benefit Services...

I hope this letter finds you enjoying the recent lovely Fall weather and that business continues to improve for you and your company. I was back in Washington, D.C. late last month and have updated information for you on legislative / tax issues that have evolved even in the last few days:

Deferred Compensation

Legislation affecting deferred compensation was just approved by the U.S. Senate on Monday, October 11, 2004. The House passed the final bill on October 8. This bill, the American Jobs Creation Act of 2004 (AJCA 2004 – also known as the “foreign trade” or “corporate tax” bill) contains most of the deferred compensation (DC) provisions from the House version of legislation first proposed in 2003. AJCA 2004 is expected to be signed into law by the President sometime in the next few weeks.

While too numerous (and still being interpreted) to describe fully here – most, if not all, existing DC plans will need to be amended to comply with the new provisions in the law – which will apply to any amounts deferred after 12/31/04. We understand there will be transition guidance forthcoming from the IRS to provide a grace period of 3-6 months to complete needed changes. Other major DC changes include: no unscheduled withdrawals will be allowed; no late elections to accelerate payouts will be allowed; voluntary deferrals of performance-based compensation have new rules about the timing of the deferral election relative to when compensation is earned; and there are new funding and withholding rules to be complied with as well.

Corporate Owned Life Insurance (COLI)

The proposed COLI legislation did NOT get attached to AJCA 2004. The amendment sponsored by Senators Conrad (ND) and Hatch (UT), and approved by Senate Finance in late 2003, never made it into the final legislation. Since this is the last session of the 108th Congress, the process will have to start over again next year. We will keep you updated in 2005 on any COLI legislation news.

Summary & Action Steps

If you are a client, we will soon be in direct contact with you to discuss the correct strategy for working through the plan amendment process this Fall and into 2005. If you are not currently a client but have ANY type of a DC plan (whether it is a voluntary deferral or simply a company-provided SERP), and you would like some assistance in dealing with these issues, please contact me directly.