

TAX LAW UPDATE - September 2005

To Our Friends, Clients and Associates...

After Labor Day, many things begin to happen: the leaves on the trees change color; the kids go back to school; and Congress returns to work in Washington, D.C. The latest word is that the Treasury Department and Internal Revenue Service will have the next round of deferred compensation guidance [for code section 409A] completed by the end of this month. Pension and Corporate Owned Life Insurance (COLI) bills are also on the agenda this fall.

Pension / COLI Legislation

There is momentum in Washington to get pension reform completed, especially given the difficulties that the PBGC is having with the recent airline industry bankruptcies. Attached to both the current House and Senate versions of pension legislation are the COLI provisions that we have previously described herein. The COLI provisions are modeled after industry “best practices” and all of our client’s COLI purchases will easily comply.

409A Regulatory Guidance

The guidance that is being drafted is expected to be voluminous (in excess of 100 pages) and is likely to be in the form of proposed and/or temporary regulations. It is also expected to provide much, but not all, of the information we have been waiting for related to deferral plans. The 3rd round of guidance from Treasury is due by year-end 2005. Specifically of interest this fall, as we enter the plan enrollment season, is how the “5-year delay” on re-deferrals should work. Rumor has it that the regulations will be favorable and will allow participants to delay receipt of specific payments by 5 years, without having to delay an entire set of installment payments. Of course, we will confirm the actual structure of the regulations as soon as they are issued.

Plan Amendment & Documentation

Since regulations clearly will not be final by 12/31/2005, the unofficial word from Washington is that the need for formal amendment of documents won’t be required until sometime in 2006 – assuming that plans are being operated under a good faith interpretation of the new law. New plans [those adopted after 1/1/2005] can still be drafted under the same good faith interpretation with the knowledge that amendments will likely be required after regulations are finalized.

We will coordinate the actual plan amendment process with clients and legal counsel once the Treasury regulations and timeline are more definite. It is almost 100% certain that this process will slide into 2006 and we have assurances from Treasury that adequate time will be provided to achieve compliance. **Please let us know if you have any questions on these issues.**

When the 409A guidance is actually received, we will send out an e-mail alert with our initial interpretations as soon as possible. If you want to be included on our “E-Alert List” for this and other like information, please send a message to SarahR@mgtcomp.com telling us which e-mail address to use.

