



MEMO

From: Weir Financial Resources, LLC
To: Clients and Friends
Date: February 2008
Subject: §409A Compliance Correction and Transitional Relief....Maybe!

The IRS issued Notice 2007-100 on September 10, 2007. This notice extended the deadline for satisfying the written plan requirement under the §409A final regulations until December 31, 2008. Under Notice 2007-100:

- certain unintentional operational failures can be corrected without penalty if the correction is made in the same taxable year that the failure occurs. Errors that may be eligible for correction in the same tax year under the notice include failures to defer amounts of nonqualified deferred compensation that should have been deferred, payments made to specified employees in violation of the six-month delay rule, and excess deferrals. To take advantage of this correction relief, the employer must comply with certain reporting requirements and must take commercially reasonable steps to avoid a recurrence of the operational failure.
- certain operational failures occurring through 2010 that are not corrected in the same taxable year and that involve limited amounts are provided relief. If the failure qualifies for the relief provided in the notice and all conditions are met, the amount required to be included in income and the resulting additional taxes imposed under § 409A are limited under the terms of the notice.
- the proposed correction program would be restricted to service providers that are not under examination for the year(s) in which the operational failure occurred and would be limited to operational failures that are corrected promptly after discovery and within two years of the occurrence.
- documentary failures and intentional or egregious operational failures are not eligible for relief under the program.

You can see that Treasury has not made this any easier to understand. **The important thing to take away is that whether this year or next, plans must continue to operate under this good faith standard and it is critical for companies to understand whether they have done so since the inception of the proposed regulations in 2004.** If you are not sure, visit the What's New link on our website (www.WeirResources.com/WhatsNew) and click on the "*11 Critical Nonqualified Plan Questions*" document.

Whether thorough review or just a quick question, we can be reached contact us at 716.854.3343 or jweir@weirresources.com.

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