



Positive Guidance Issued on Deferred Legal Fees

The IRS and Treasury have issued formal regulatory guidance in Notice 2005-1, 2005-2 Internal Revenue Bulletin, January 10, 2005, that excludes most service providers, including attorneys from Section 409A. This is a favorable ruling for deferred legal fee arrangements. The regulations are presented in a question and answer format and Question 8 provides this guidance:

Q-8 To Which Service Providers Does § 409A Apply?

A-8 ...Section 409A also does not apply to arrangements between a service provider and a service recipient if (a) the service provider is actively engaged in the trade or business of providing substantial services, other than (I) as an employee or (II) as a director of a corporation; and (b) the service provider provides such services to two or more service recipients to which the service provider is not related and that are not related to one another.

The American Jobs Creation Act of 2004, Pub. Law No. 108-357, 118 Stat. 1418, added § 409A to the Internal Revenue Code with new rules that affect non-qualified deferred compensation arrangements. However, these rules will not apply to a person, such as an attorney, who is actively engaged in providing services to two or more people who are unrelated to the attorney and to one another.

In another positive development, a life insurance company that had previously stated that it would not enter into deferred legal fee arrangements, will now accept these transactions, due to this clear guidance.

For more information about deferred legal fees, or for assistance in deferring legal fees, please call 888-LESTISS (537-8477) or visit www.lesti.com.

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